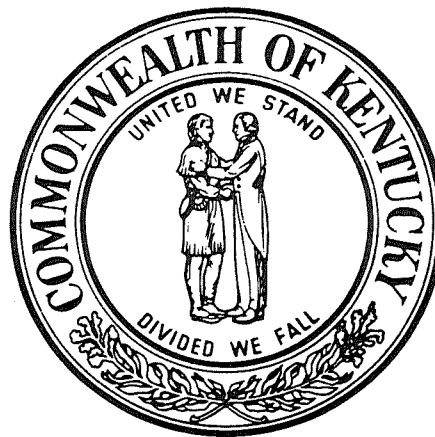


# of Administrative Register kentucky

LEGISLATIVE RESEARCH COMMISSION  
FRANKFORT, KENTUCKY

VOLUME 11, NUMBER 12  
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UNLESS WRITTEN NOTIFICATION OF INTENT TO ATTEND  
A PUBLIC HEARING IS RECEIVED BY THE PROMULGATING  
AGENCY AT LEAST FIVE (5) DAYS BEFORE THE HEARING  
DATE, THE HEARING MAY BE CANCELLED.

MEETING NOTICE: The next meeting of the Administrative Regulation  
Review Subcommittee is June 3 and 4, 1985. For information, call  
502-564-8100, ext. 535.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly advance sheets service for the 1984 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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806	KAR 50	: 155
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## PUBLIC HEARINGS

The administrative body shall schedule a public hearing on proposed administrative regulations, proposed amendments to administrative regulations, and proposed repeal of administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication of the administrative regulation. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

This information shall be published in the "Administrative Register" at the same time as the initial publication of the administrative regulation. Any person interested in attending the hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler immediately by telephone of the cancellation with a follow-up letter and the Compiler will note upon the face of the original administrative regulation that the hearing was cancelled.

No transcript of the hearing need be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

If an administrative body has several proposed administrative regulations published at the same time, the proposed administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings.

## EMERGENCY REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.)

## STATEMENT OF EMERGENCY

This amendment is necessary to implement the mandatory Brucellosis regulation 302 KAR 20:055. Mandatory vaccination is an essential tool in the prevention, control and eradication of Brucellosis and will aid the farmer in monitoring and expanding this market. This amendment is needed immediately and an ordinary regulation will take too long to promulgate. An emergency therefore exists and an emergency regulation is needed.

This regulation will be followed by an ordinary regulation.

MARTHA LAYNE COLLINS, Governor  
DAVID E. BOSWELL, Commissioner

## DEPARTMENT OF AGRICULTURE

## 302 KAR 20:040E. Entry into Kentucky.

RELATES TO: KRS Chapter 257

PURSUANT TO: KRS 257.030

EFFECTIVE: April 23, 1985

NECESSITY AND FUNCTION: To specify health requirements for admission of all livestock and animals into Kentucky.

Section 1. General Provisions. (1) All animals, except as noted, shall be accompanied by an approved health certificate. Health certificates means a legible record covering the requirements of the state of destination accomplished on an official form of a standard size from the state of origin or an equivalent

form of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, that is prepared and issued by a licensed, accredited veterinarian. An approved health certificate means an official health certificate approved by the the chief livestock sanitary official of the state of origin.

(2) If animals are from tuberculosis accredited or brucellosis certified herds, health certificates shall show accreditation and certification number with date of last herd test for tuberculosis and brucellosis.

(3) Cattle entering Kentucky shall be vaccinated against brucellosis as required in 302 KAR 20:055.

## Section 2. Cattle. (1) Brucellosis.

(a) Negative results from an approved state-federal laboratory.

(b) Official vaccinate. A female bovine animal vaccinated with an approved reduced dosage Brucella vaccine while four (4) through ten (10) months of age permanently identified as a vaccinate. Date of birth and date of vaccination shall be recorded on the health certificate.

(c) Modified certified state. Thirty (30) day tube or card test of individual. Cattle six (6) months of age or older for dairy and breeding purposes, except official vaccinates of the beef breeds under twenty-four (24) months of age and dairy breeds under twenty (20) months of age may be imported into the Commonwealth of Kentucky provided they have passed a negative brucellosis tube or card test within thirty (30) days of date of entry, or originate directly and

immediately from a certified herd provided the animals to be imported have qualified as negative members of the certified herd on the last annual certification test.

(d) Bison six (6) months of age or older except official vaccinated twenty-four (24) months and under shall be negative to tube or card test within thirty (30) days of date of entry.

(e) State not modified certified: Permit shall be obtained prior to movement for all cattle for breeding and dairy purposes. These cattle must comply with federal regulations.

(2) Tuberculosis.

(a) Cattle six (6) months of age or older for dairy and breeding purposes shall be negative to an official tuberculin test within sixty (60) days of date of entry, or originate directly and immediately from:

1. Accredited herd, or
2. Eradicated free state.

(b) Cattle classified as suspects or cattle originating from a quarantined herd shall not be imported.

(c) Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

(d) Bison six (6) months of age or older negative within sixty (60) days of entry.

(3) Other disease requirements.

(a) Scabies. No cattle affected with or exposed to scabies or from an area quarantined because of scabies shall be imported, shipped, driven or otherwise moved into Kentucky except in accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock sanitary official or his authorized representative.

(b) Ticks. No cattle infested with ticks (*Margarophus Annulatus*) or exposed to tick infestation shall be shipped, trailed, driven or otherwise moved into Kentucky for any purpose.

(c) No cattle from a state-federal tick quarantined area shall be shipped, trailed, driven or otherwise moved into Kentucky except in accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock sanitary official or his authorized representative.

(d) Cattle infected with warts, ringworm or any infectious or communicable disease are not eligible for entry.

(4) Other movements.

(a) Feeder cattle. Feeder cattle as defined (non-pregnant heifers, steers and bulls under two (2) years of age) may be imported without brucellosis and tuberculosis tests from herds or areas not under quarantine if accompanied by approved health certificate or written permit or both for movement to a feed lot with valid feeding permit or to a state-federal approved stockyard or public stockyard for reconsignment to a valid feed lot where they shall be maintained separately and apart from all dairy and breeding cattle. Feeder cattle from non-modified certified areas are not eligible for entry except from qualified herds.

(b) Slaughter cattle. Cattle consigned for immediate slaughter may be imported without official test for brucellosis or tuberculosis

provided such cattle are consigned for immediate slaughter to a recognized slaughtering center under state, federal or municipal inspection or to an approved state-federal stockyard or federal stockyard for reconsignment directly to a recognized slaughtering center. Any animal or animals diverted enroute will be in violation of this regulation.

(c) Calves six (6) months of age and under. No restriction if accompanied by an approved health certificate provided such imports are in compliance to general provisions as specified. Exception: Calves from non-modified certified area must originate from a herd known not to be infected with brucellosis.

(5) Exhibition.

(a) Brucellosis.

1. Breeding cattle six (6) months of age or older, except official female brucellosis vaccinates of the beef breeds under twenty-four (24) months of age and dairy breeds under twenty (20) months of age, shall be negative to an official tube or card test for brucellosis within thirty (30) days of entry or originate directly and immediately from a certified herd, provided cattle for exhibition have qualified as negative members of certified herd on last annual certification test.

2. Steers and heifers for carcass classes shall be positively identified but shall not be required to be brucellosis tested if accompanied by an approved health certificate.

(b) Tuberculosis.

1. Cattle six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days of entry or originate directly and immediately from an accredited herd or a tuberculosis eradicated free state.

2. Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

3. Steers and heifers for carcass classes shall be positively identified but shall not be required to be tuberculosis tested if accompanied by approved health certificate.

Section 3. Horses. (1) All horses entering Kentucky, except unweaned foals, and other equidae, for any purpose other than for immediate slaughter shall be accompanied by an official health certificate of state of origin issued by a state, federal or licensed accredited veterinarian and such certificate shall include:

(a) Veterinarian's statement that examination was made within the past thirty (30) days and revealed the animal to be free from symptoms of any infectious disease or exposure thereto; and

(b) Have attached thereto a copy of certificate of report from a laboratory approved by the USDA showing the animal(s) to be negative to AGID test for equine infectious anemia within the past six (6) months.

(2) All horses past six (6) months of age and other equidae offered for public sale shall be negative to AGID test within past six (6) months. Only horses offered for sale for slaughter only shall be exempt from this requirement.

(3) All horses and other equidae offered for entry into fairgrounds, livestock showgrounds, public boarding stables and for trail rides or racing shall be negative to test for AGID within twelve (12) months and shall be accompanied by

certificate of report from a laboratory approved by the USDA.

(4) All reactors to AGID test for equine infectious anemia shall be officially, permanently identified using numbers and letter 61A with a brand on left neck region.

(5) All reactors not slaughtered or euthanized shall be isolated and quarantined. This isolation shall include stabling in a stall that is screened to preclude entry and exit of mosquitoes, stable flies and horse flies during those seasons of the year when such insects are prevalent. These animals will also be kept at least 200 yards from all other horses.

(6) The movement of any quarantined reactor shall be done only on permission of representative of the Department of Agriculture.

(7) All horses in a herd in which a reactor is found shall be quarantined pending a negative test of all horses.

#### Section 4. Swine. (1) Specific diseases.

(a) Garbage fed swine. Swine fed raw garbage shall not be imported for any purpose. Swine fed properly cooked garbage are eligible for import directly to a state or federal inspected slaughtering establishment only.

(b) Brucellosis. All swine for breeding purposes six (6) months of age or older shall be negative to an official test for brucellosis within thirty (30) days of date of entry of originate directly and immediately from a validated herd provided animals to be imported were tested on last validation herd test. No agglutination in dilution of 1-50 shall be accepted unless the individual or individuals to be imported are negative to an official card test.

(c) Hog cholera.

1. No treatment required or allowed.

2. Permit. A permit is required from the state veterinarian's office before entry on breeding and feeding swine in the event of an emergency disease outbreak.

3. All feeding and breeding swine to be held in isolation and under quarantine for a minimum of thirty (30) days.

4. All swine for feeding and breeding purposes must be identified by ear tag or ear notch to the farm of origin.

(d) Pseudorabies. All swine imported for feeding and breeding purposes six (6) months of age or older shall be negative to the serum neutralization test within thirty (30) days of date of entry and originate from a farm free of pseudorabies for the past six (6) months as evidenced on the health certificate.

(2) Other movements.

(a) Registered feedlots. Not applicable.

(b) Salesyards and markets. No vaccination or treatment if consigned to recognized slaughtering center or to public stockyard or approved stockyard for reconsignment to recognized slaughtering center within ten (10) days of date of entry.

(c) Farm premises. Identity to the farm of origin must be maintained on all breeding and feeding swine imported from farm premises to an approved stockyard or farm of destination.

(d) Exhibition. Approved health certificate in last thirty (30) days of entry. See subsection (1)(b), (c), and (d) of this section.

#### Section 5. Sheep. (1) Specific diseases.

(a) Scrapie. No sheep or lambs shall be imported that originated from or are known to be exposed to flocks under surveillance for scrapie.

(b) Scabies. All sheep or lambs for breeding or feeding purposes imported from a farm, ranch or like premises shall be accompanied by an approved health certificate indicating such sheep and lambs originated directly and immediately from an official scabies eradicated free area.

(c) Sore mouth. Any sheep or lambs showing lesions of contagious exythma shall not be imported.

(2) Other movements.

(a) Apparently healthy sheep and lambs may be imported into Kentucky for immediate slaughter when consigned directly to a recognized slaughtering center approved by the chief livestock sanitary official of Kentucky or to a public stockyard, a state-federal approved stockyard, concentration point or public stockyard when reconsigned from that point direct to immediate slaughter.

(b) Exhibitions and shows. All sheep and lambs for exhibition shall be in compliance to requirements noted above as specified for sheep and in addition shall be identified individually by ear tattoo or ear tag. Such identification shall be entered on an approved health certificate.

#### Section 6. Goats. (1) Specific diseases.

(a) Scabies. All goats must originate from a scab-free area.

(b) Scrapie. No goats from a herd under surveillance for scrapie or those that are known to have been exposed to or that are progeny shall be imported.

(2) Exhibition and sale.

(a) Brucellosis. Animals six (6) months of age or older shall have negative tube or card test in last thirty (30) days or originate directly and immediately from a certified herd.

(b) Tuberculosis. Animals six (6) months of age or older shall have negative tuberculin test in last sixty (60) days or originate directly and immediately from accredited herd.

#### Section 7. Poultry. (1) Specific diseases.

(a) Pullorum. Negative agglutination test within thirty (30) days of date of entry.

(b) Chicks and hatching eggs shall originate from a flock under the National Poultry and/or National Turkey Improvement Plan.

(2) Entry and/or exhibition. Approved health certificate stating compliance with above requirements and in addition thereto all poultry shall be inspected prior to exhibition for evidence of any infectious, contagious or communicable disease of poultry. Any evidence of any communicable, infectious or contagious disease shall be justification for the elimination of said poultry from exhibition and/or sale at no expense to the Commonwealth of Kentucky.

Section 8. Psittacine Birds. As regulated by Title 9, Part 82 Code of Federal Regulations, filed herein by reference.

Section 9. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a health certificate signed by a licensed, accredited veterinarian

stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, (Inc.); qualifies dog if it is one (1) year of age when vaccinated; provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish an approved health certificate.

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Bureau for Health Services, Kentucky Cabinet for Human Resources.

Section 10. Furbearing Animals, Domesticated Wild Animals and Zoo Animals. Wild and semi-wild animals under domestication or in custody may be imported into the state if accompanied by a permit and health certificate and provided that a report of the number of animals is made to the chief livestock sanitary official of Kentucky within ten (10) days and that immediate opportunity for examination is afforded a representative of the Division of Livestock Sanitation, Kentucky Department of Agriculture, to determine the health status of such animal or animals and the imports are presented for the administration of all laboratory procedures and tests deemed necessary by the chief livestock sanitary official of Kentucky. Transportation permit required on wild, game animals, birds and fish. Permit to be obtained from Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601 (telephone 502-564-3400).

DAVID E. BOSWELL, Commissioner

APPROVED BY AGENCY: April 4, 1985

FILED WITH LRC: April 23, 1985 at 10 a.m.

#### Statement of Emergency

Brucellosis is a communicable disease in the Commonwealth. The Federal Government in cooperation with Kentucky has embarked on a program to prevent control and eradicate the disease. Mandatory vaccination is an essential tool in the eradication of Brucellosis. Surrounding states have already enacted such a regulation and this regulation is necessary to help preserve Kentucky's market in those states. This measure is needed immediately and an ordinary regulation will take too long to promulgate. An emergency therefore exists and an emergency regulation is needed.

This regulation will be followed with an ordinary regulation.

MARTHA LAYNE COLLINS, Governor  
DAVID E. BOSWELL, Commissioner

#### DEPARTMENT OF AGRICULTURE

##### 302 KAR 20:055E. Brucellosis vaccination.

RELATES TO: KRS 257.020, 257.030, 257.040, 257.060, 257.070, 257.115

PURSUANT TO: KRS 257.030

EFFECTIVE: April 23, 1985

NECESSITY AND FUNCTION: To specify the requirements for vaccination against brucellosis of eligible calves in Kentucky.

Section 1. General Provisions. All eligible female animals shall be vaccinated with an approved Brucella vaccine following the vaccination protocol set forth by the State Veterinarian's Office.

Section 2. Eligible Animals. (1) Female bovine animals born after July 1, 1985 and four (4) months of age or older, which enter the Commonwealth of Kentucky for feeding or breeding purposes. Animals going to a state or federally approved livestock market or directly to slaughter or spayed animals that have been branded with a spade brand or animals for exhibition purposes only are exempt.

(2) Female bovine animals, born after July 1, 1985 and four (4) months of age or older, purchased at a Kentucky livestock market. These animals must be vaccinated before they are returned to a farm in Kentucky.

(3) Female bovine animals, born after July 1, 1985 and four (4) months of age or older, which change ownership.

Section 3. Procedures. (1) Eligible animals must be officially vaccinated between four (4) and ten (10) months of age and identified by a vaccination tattoo in the ear and an official vaccination ear tag, or, in the case of registered cattle, by an identification tattoo.

(a) A vaccination tattoo in the ear shall legibly identify the quarter of the year, shield and the calendar year of vaccination.

(b) An official vaccination ear tag shall identify the animal according to the state of origin, official vaccinate status and individual identification number.

(2) Eligible animals must be vaccinated and identified by a licensed, accredited veterinarian or an authorized representative of the Department of Agriculture.

(3) Vaccinations shall be reported when administered to the appropriate state agency on official "Brucellosis Calfhood Vaccination Record" as provided.

(4) Animals on Kentucky farms or returning to a Kentucky farm can be vaccinated with funds appropriated by the Commonwealth of Kentucky if available. The cost of vaccination at a livestock market is the responsibility of the purchaser or seller.

(5) No person shall tamper with the vaccination tattoo or official vaccination ear tag, and no person shall re-tattoo any animal unless approval is first obtained from the Division of Livestock Sanitation.

DAVID E. BOSWELL, Commissioner

APPROVED BY AGENCY: April 4, 1985

FILED WITH LRC: April 23, 1985 at 10 a.m.

# STATEMENT OF EMERGENCY

This amendment is necessary to implement the mandatory Brucellosis regulation 302 KAR 20:055. Mandatory vaccination is an essential tool in the prevention, control and eradication of Brucellosis and will aid the farmer in monitoring and expanding this market. This amendment is needed immediately and an ordinary regulation will take too long to promulgate. An emergency therefore exists and an emergency regulation is needed.

This regulation will be followed by an ordinary regulation.

MARTHA LAYNE COLLINS, Governor  
DAVID E. BOSWELL, Commissioner

## DEPARTMENT OF AGRICULTURE

### 302 KAR 20:065E. Sale and exhibition for Kentucky livestock only.

RELATES TO: KRS Chapter 257

PURSUANT TO: KRS 257.030

EFFECTIVE: April 23, 1985

NECESSITY AND FUNCTION: To specify general sanitary and health requirements in relation to the sale and exhibition of Kentucky livestock in Kentucky.

#### Section 1. Cattle. (1) General requirements.

(a) All animals, except as noted, shall be accompanied by an approved health certificate. Health certificates shall be void 150 days after issuance for exhibition and thirty (30) days after issuance for sale.

(b) If animals are from accredited or certified herds, health certificate shall show accreditation and certification number with date of last herd test for tuberculosis and brucellosis.

(c) Blood tests for brucellosis must be conducted in a state-federal laboratory and be negative according to recommended procedures of the Uniform Methods and Rules published by APHIS, VS, USDA.

(d) Cattle changing ownership shall be vaccinated against brucellosis as required in 302 KAR 20:055.

#### (2) Brucellosis.

(a) Sale. All breeding cattle moving from one (1) premise to another premise on the change of ownership must be negative to the brucellosis test within thirty (30) days prior to movement.

(b) Exhibition. Animals six (6) months of age or over shall be negative to an official test for brucellosis within 150 days of date of exhibition, unless exempt by one (1) of the following:

1. Originate directly from a certified herd.

2. Officially vaccinated under twenty (20) months of age for the dairy breeds and twenty-four (24) months of age for the beef breeds.

3. Steers. Must be accompanied by approved health certificate showing individual identification. No brucellosis test required.

#### (3) Tuberculosis.

(a) Sale. Animals six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days of date of sale, unless exempt by one (1) of the following:

1. Originate directly from an accredited herd.

2. Originate directly from a herd in which all animals six (6) months of age or older are negative to an official tuberculin test within last twelve (12) months of date of sale.

(b) Exhibition. No test required.

Section 2. Performance Bull Testing Program. (1) All animals shall be accompanied by approved health certificates.

(2) Brucellosis. Animals entered in this program shall, if six (6) months of age or older, be negative to an official brucellosis test within thirty (30) days of date of entry or originate directly and immediately from a certified herd.

(3) Tuberculosis. All animals six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days or originate directly and immediately from an accredited herd.

Section 3. Horses. (1) All horses past six (6) months of age and other equidae offered for public sale shall be negative to AGID test within the past six (6) months. Only horses offered for sale for slaughter shall be exempt from the requirements.

(2) All horses and other equidae offered for entry into fairgrounds, livestock show grounds, public boarding stables and for trail rides or racing shall be negative to test AGID within twelve (12) months and shall be accompanied by certificate of report from a laboratory approved by the USDA.

(3) All reactors to AGID test for equine infections anemia shall be officially, permanently identified using numbers and letter 61A with a brand on the left neck region.

(4) All reactors not slaughtered or euthanized shall be isolated and quarantined. This isolation shall include stabling in a stall that is screened to preclude entry and exit of mosquitoes, stable flies and horse flies during those seasons of the year when such insects are prevalent. These animals will also be kept at least 200 yards from all other horses.

(5) The movement of any quarantined reactor shall be done only on permission of representative of the Department of Agriculture.

(6) All horses in a herd in which a reactor is found shall be quarantined pending a negative test on all horses.

Section 4. Swine. (1) All swine for exhibition and sale must be accompanied by an approved health certificate which shall be void 150 days after issuance for exhibition and thirty (30) days after issuance of sale.

#### (2) Brucellosis.

(a) Sale. All swine except barrows six (6) months of age or older shall have a negative thirty (30) day test in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd. Validation number and date of last herd test must be shown on the approved health certificate.

(b) Exhibition. All swine except barrows six (6) months of age or older shall have a negative 150 day test in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd. Validation number and date of last herd test must be shown on the approved

health certificate.

(3) Identification. All swine must have a permanent means of identification.

(4) Pseudorabies.

(a) Sale. All swine must be negative to the serum neutralization test within thirty (30) days or originate from a qualified pseudorabies negative herd.

(b) Exhibition. All swine must be negative to the serum neutralization test within 150 days of consignment for exhibition or originate from a qualified pseudorabies negative herd.

Section 5. Sheep. (1) Scrapie. No sheep or lambs shall be consigned that originated from or are known to be exposed to flocks under surveillance for scrapie.

(2) Scabies. All sheep or lambs for breeding and feeding purposes consigned from a farm, ranch or like premises shall be accompanied by an approved health certificate indicating such sheep and lambs originated directly and immediately from an official scabies-eradicated-free area.

(3) Sore mouth. Any sheep or lambs showing lesions of contagious exythma shall not be consigned.

(4) Sale. All sheep and lambs consigned shall be identified individually by ear tattoo or ear tag and entered on an approved health certificate which is good for thirty (30) days after issuance.

(5) Exhibition. All sheep and lambs consigned shall be identified individually by ear tattoo or ear tag and entered on an approved health certificate which is good for 150 days after issuance.

Section 6. Goats. (1) Scabies. All goats must originate from a scab-free area.

(2) Scrapie. No goats from a herd under surveillance for scrapie that are known to have been exposed to or that are progeny shall be considered.

(3) Brucellosis.

(a) Sale. Animals six (6) months of age or older shall have a negative thirty (30) day test in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, as applies to the bovine test or originate directly from a certified herd and be accompanied by an approved health certificate which shall be void thirty (30) days after issuance.

(b) Exhibition. Goats six (6) months of age or older shall be negative to an official blood test for brucellosis within 150 days of exhibition or originate directly from a certified herd and be accompanied by an approved health certificate which shall be void 150 days after issuance.

(4) Tuberculosis.

(a) Sale. Animals six (6) months of age or older shall have negative tuberculin test in last sixty (60) days or originate directly and immediately from an accredited herd.

(b) Exhibition. No test required.

Section 7. Poultry. Negative pullorum agglutination test within thirty (30) days for sale and/or exhibition. Test record must accompany poultry.

Section 8. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition

shall be accompanied by a health certificate signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies, or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for a three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, (Inc.), qualifies a dog if it is one (1) year of age when vaccinated; provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish an approved health certificate.

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Department for Health Services, Kentucky Cabinet for Human Resources.

DAVID E. BOSWELL, Commissioner

APPROVED BY AGENCY: April 4, 1985

FILED WITH LRC: April 23, 1985 at 10 a.m.

#### Statement of Emergency

This amendment is necessary to implement the mandatory Brucellosis regulation 302 KAR 20:055. Mandatory vaccination is an essential tool in the prevention, control and eradication of Brucellosis and will aid the farmer in monitoring and expanding this market. This amendment is needed immediately and an ordinary regulation will take too long to promulgate. An emergency therefore exists and an emergency regulation is needed.

This regulation will be followed with an ordinary regulation.

MARTHA LAYNE COLLINS, Governor

DAVID E. BOSWELL, Commissioner

#### DEPARTMENT OF AGRICULTURE

#### 302 KAR 20:070E. Stockyards.

RELATES TO: KRS Chapter 257

PURSUANT TO: KRS 257.030

EFFECTIVE: April 23, 1985

NECESSITY AND FUNCTION: To designate sanitary requirements, and operational procedures in all stockyards relative to disease control.

Section 1. Operating Sale Requirements. (1) The owner or manager operating a stockyard shall arrange for an accredited, licensed veterinarian approved by the Department of Agriculture to be present in said sales point to carry out the provisions of this regulation.

(2) The person operating a stockyard shall provide separate pens or a yarded division for isolating animals classed as reactors to brucellosis or any communicable disease.

(3) The owner operating a stockyard shall

provide adequate space, utilities, hot water and assistance for the accredited, licensed veterinarian to officially carry out the provisions of this regulation.

(4) The owner or operator shall furnish and maintain one (1) or more cattle chutes suitable for restraining animals for inspection of any infectious, contagious or parasitic condition, testing, tagging, branding and other procedures routinely required in providing livestock sanitary services and identification for movement at stockyards.

(5) The owner or operator shall maintain records of the seller and purchaser of all livestock for one (1) year. These records to be made available to Department of Agriculture representatives for inspection upon request during regular business hours.

(6) The owner or operator shall provide adequate facilities and service at a reasonable cost, if not available at or near the yards, for cleaning and disinfecting cars, trucks or other vehicles which have transported to the stockyards animals known to be infected with or exposed to a contagious, infectious, communicable or parasitic disease with a disinfectant approved by the chief livestock sanitary official.

Section 2. General Requirements. (1) All stockyards shall be maintained in a workable and sanitary condition. Stockyards shall be inspected as required by a representative of the board.

(2) After an occurrence of any infectious, contagious, parasitic or communicable disease of livestock in a stockyard, exposed facilities capable of transmitting disease shall be cleaned and disinfected with approved disinfectants in a manner approved by the chief livestock sanitary official.

(3) Livestock found to be infected and showing clinical or diagnostic symptoms of an infectious, contagious, parasitic or communicable disease shall upon recommendation of stockyard veterinarian or authorized representative of the chief livestock sanitary official be quarantined in an isolated portion of the yards for treatment, additional diagnostic laboratory procedures, disposition to slaughter or other disposition pursuant to accepted methods of disease prevention and control.

(4) All livestock originating from a quarantined herd or premises shall be sold under permit for immediate slaughter.

(5) The card test shall be the official test for brucellosis at stockyards. All animals showing positive reaction must be identified and sold for immediate slaughter only. Indemnity will be paid for reactors disclosed by stockyard test as long as state-federal funds are available.

(6) Upon disclosure of a reactor(s) by the stockyard veterinarian, all cattle in the consignment from the same herd are exposed cattle and must be returned to the farm of origin under quarantine for retesting or sold for slaughter with proper identification. Assembled cattle are considered to be a herd.

(7) Exposed animals and reactor animals will be identified as described in Title 9, CFR, 78.7 and 78.8, herein filed by reference.

(8) Cattle purchased at a Kentucky livestock

market shall be vaccinated against brucellosis as required in 302 KAR 20:055.

Section 3. Veterinary Compensation. Accredited veterinarians shall receive for any services rendered a fee that has been agreed on by the stockyard operators and the accredited veterinarians. Such fees shall be deducted from the seller's or buyer's check, depending upon conditions of sale and shall be paid to the accredited veterinarian, except for those services reimbursed pursuant to a state-federal cooperative program.

Section 4. Veterinary Duties. The stockyard veterinarian shall in cooperation with representative(s) of the department: (1) Examine, validate and issue certificates pertinent to the movement of livestock to be sold.

(2) Conduct required test of livestock.

(3) Inspect all livestock for clinical evidence of infectious, contagious, or parasitic diseases.

(4) Obtain blood samples. Aid and assist in conducting of associated laboratory tests. Submit such specimens to state-federal laboratory for confirmation. Such specimens shall be posted by mail or delivered directly to state-federal laboratory within twenty-four (24) hours.

(5) Compile and present such reports as are routinely required to the chief livestock sanitary official.

(6) Report the presence of any communicable disease condition to chief livestock sanitary official.

Section 5. Cattle Requirements. (1) Tuberculosis:

(a) Imports. Cattle six (6) months of age or older for dairy and breeding purposes shall be negative to an official tuberculin test within thirty (30) days of date of entry or originate directly and immediately from an accredited herd or eradicated free state.

(b) Cattle classified as suspects or those originating from a quarantined herd shall not be imported.

(c) Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

(d) Kentucky cattle: No tuberculosis requirements if to a Kentucky destination.

(2) Brucellosis:

(a) All cattle six (6) months of age or older offered for sale at the stockyard for breeding and dairy purposes, except for the following, shall be negative to an official brucellosis test within the last eight (8) days of sale:

1. Official vaccinates identified by official tattoo twenty-four (24) months of age and under if a beef animal and twenty (20) months of age and under if a dairy animal, provided heavy springers and females post partum shall be negative regardless of age at time of sale.

2. Cattle from a certified herd.

3. All test-eligible cattle arriving directly from a modified certified state that are moved to a farm in the Commonwealth shall be retested within forty-five (45) to 120 days and shall be placed under quarantine with no commingling pending negative results on all involved animals on retest.

(b) Backtagged cattle:

1. All mature cattle eighteen (18) months or older, as indicated by the presence of the first pair of permanent incisor teeth, except steers and spayed heifers, consigned to any stockyard, or purchased direct by any slaughtering establishment, shall be backtagged in a routine manner prescribed by the department.

2. All backtagged cattle shall be negative to a brucellosis test within eight (8) days of sale.

3. Backtags placed on slaughter cattle shall not be removed at any time or by any person only under specific instructions from the chief livestock sanitary official.

4. Backtagged cattle shall proceed directly to a recognized slaughtering center with no diversion whatever enroute except to another approved stockyard for reconsignment to slaughter.

5. Materials for the backtagging program shall be furnished by the department and/or Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

(c) All breeding, dairy and backtagged cattle requiring testing shall be tested at the first point of assembly or concentration.

(d) Cattle of beef breeds between the ages of six (6) and eighteen (18) months sold for feeding and grazing shall be exempt from brucellosis test unless they are heavy springers or female post partum.

Section 6. Swine Requirements. (1) As prescribed in 302 KAR 20:080.

(2) Effective January 1, 1971, all serum requirements for swine moving into or through the State of Kentucky were rescinded.

(3) Breeding swine: All swine six (6) months of age or older shall be negative to both an official blood test for brucellosis and the serum neutralization test for pseudorabies at time of sale. Swine shall be deemed negative at the time of sale to an official test if accompanied by proof of a negative test result within thirty (30) days of sale. Swine originating from a validated brucellosis free herd shall be exempt from a stockyard test for brucellosis.

(4) Livestock markets buying stations, and concentration points handling all classes of swine:

(a) All swine, including slaughter swine, to be inspected by an accredited veterinarian prior to leaving market.

(b) Swine moving interstate from markets to be in compliance with Title 9, Part 76, CFR, herein filed by reference, including health certification by the accredited veterinarian authorized by the state to furnish such services.

(c) Slaughter swine leaving premises to be consigned only for immediate slaughter to a recognized slaughtering establishment approved for this purpose in accordance with federal and state regulations.

(d) Markets to maintain well-constructed pens and swine-handling facilities that are clean and in good repair.

(e) Markets to provide pens surfaced with impervious material for holding and handling feeder pigs and breeding swine.

(f) Markets to provide satisfactory, well-lighted facilities for inspection and proper restraint.

(g) Clean and disinfect holding and handling pens, alleys and other facilities used in selling swine after use by each lot of swine under procedures specified by state and federal agencies to guard against spread of disease.

(h) Maintain records of origin and destination for all swine entering market and grant federal and state inspectors access to such records. Identification as to farm where farrowed shall be maintained for all feeder pigs and breeding stock and all slaughter swine which may be diverted for purposes other than slaughter. Records shall be maintained for one (1) year.

(i) Feeding and breeding swine must be placed in pens separate and apart from slaughter swine. All swine designated for slaughter must be delivered directly to an approved slaughter establishment with no diversion enroute.

(j) Permit no cull pigs to enter market unless provisions are made to pen such pigs separate and apart from all other swine so contact with healthy swine does not occur. Facilities used by these swine will not be used by other swine until cleaning and disinfecting have been accomplished. Further, cull swine to be permanently identified by an ear tag in the right ear, quarantined to the purchaser, and released from said quarantine by consignment to slaughter only. A cull pig is defined as one which does not pass veterinary inspection for health.

(k) Permit no garbage fed swine to enter market unless provisions are made to handle and pen such swine separate and apart from all other swine to avoid contact with other marketable swine.

(l) Permit no swine to be moved into or from the market unless a state or federal inspector releases such swine.

(m) Require all buyers of swine to determine the purpose of their movement. If for slaughter and there is any reason to believe the swine might be diverted (under-weight swine, thin sows, etc.) the inspector may require that such swine be identified by ear tag and consigned to slaughter on a special permit. Further, any swine with which these swine mingle shall cause the entire lot to be ineligible for movement except to slaughter.

(n) Permit no feeder pigs or breeding swine to remain in the market more than seventy-two (72) hours.

(o) No feeding or breeding swine are to be allowed in any market for resale within thirty (30) days from prior sale date.

(5) Livestock markets, buying stations and concentration points handling slaughter swine only.

(a) Swine moving interstate to be in compliance with Title 9, Part 76, CFR, herein filed by reference, and applicable state regulations.

(b) Accept swine only for slaughter and to permit no swine to leave market except for slaughter only.

(c) Markets to maintain well-constructed pens and swine-handling facilities that are clean and in good repair.

(d) Maintain records of origin and destination for all swine entering market and grant federal and state inspectors access to such records. Records shall be maintained one (1) year.

(e) Isolate all swine suspected of being affected with or exposed to infectious disease,



promptly notify the state or federal agency, and hold such swine in isolation pending instructions on disposition.

(f) Clean and disinfect holding and handling pens, alleys, and other facilities used in selling swine under procedures specified by state and federal agencies to guard against spread of disease.

Section 7. Sheep and Goat Requirements. (1) As prescribed in 302 KAR 20:040.

(2) Before the beginning of a sale all sheep and goats to be sold for breeding purposes that are free from evidence of infectious, contagious or parasitic disease shall be separated from all other sheep and goats in a part of the yard provided for this purpose.

(3) All sheep and goats that as individuals or any part of an assembled group show evidence of any infectious, contagious, communicable or parasitic disease must be sold for immediate slaughter or otherwise disposed of under permit issued by the chief livestock sanitary official.

(4) Goats for dairy or breeding purposes if free from evidences of any infectious, contagious, or parasitic disease shall originate directly and immediately from a brucellosis certified free herd or if six (6) months of age or over be negative to an official brucellosis test within thirty (30) days of date of sale.

DAVID E. BOSWELL, Commissioner

APPROVED BY AGENCY: April 4, 1985

FILED WITH LRC: April 23, 1985 at 10 a.m.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement**

**405 KAR 7:020E. Definitions and abbreviations.**

RELATES TO: KRS Chapter 350

PURSUANT TO: KRS Chapter 13A, 350.028, 350.465

EFFECTIVE: May 7, 1985

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on

the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person seeking a permit from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the cabinet for the issuance for exploration approval or a permit.

(8) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted where the cabinet has determined that they comply with KRS Chapter 350, 405 KAR 16:100, 405 KAR 16:060, Section 10, and 405 KAR 16:210; or 405 KAR 18:100, 405 KAR 18:060, Section 8 [9], and 405 KAR 18:220.

(9) "Aquifer" means a zone, stratum, or group

of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial [a specific] use.

(10) "Area" as used in Title 405, Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020, Sections 3 and 4 and 405 KAR 24:030, Section 8, occur throughout and form a significant feature.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Title 405, Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Title 405, Chapters 7 through 24.

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

(14) "Cemetery" means any area where human bodies are interred.

(15) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(16) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of Title 405, Chapters 7 through 24 where such activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water or other environmental resources.

(17) "Coal processing plant" means a collection of facilities, including all associated support facilities and operations, where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities.

(18) "Coal processing waste" means earth materials which are separated from product coal, and slurred or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal.

(19) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(20) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(21) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(22) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(23) "Complete application" means an application for exploration approval or permit, which contains all information required under KRS Chapter 350 and Title 405, Chapters 7 through 24.

(24) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(25) "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (PL 95-87).

(26) "Day" means calendar day unless otherwise specified to be a working day.

(27) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(28) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(29) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 10 is released.

(30) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(31) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(32) "Embankment" means a man-made deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(33) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(34) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to January 18, 1983.

(35) "Experimental practice," as used in 405 KAR 7:060, means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.

(36) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(37) "Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(38) "Federal lands program" means a program established by the Secretary of the Interior pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 (PL 95-87, 91 Stat. 445 (30 USC Section 1201 et. seq.)) to regulate surface coal mining and reclamation operations on federal lands.

(39) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(40) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(41) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to

high environmental quality, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal.

(42) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(43) "General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

(44) "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(45) "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency or office of the unit which, directly or through another unit of government, finance construction.

(46) "Grazingland" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

(47) "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(48) "Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.

(49) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(50) "Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(51) "Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological and paleontological sites, cultural or religious districts, places, or objects, or sites for which historic designation is pending.

(52) "Historically used for cropland":

(a) "Historically used for cropland" means that lands have been used for cropland for any

five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or paragraph (a)2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(53) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(54) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(55) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(56) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(57) "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen at the time the original permit application was prepared and that is small in relation to the permit area (surface operations area for underground mining activities).

(a) Where an extension includes new areas from

which coal will be removed, it will be considered as an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Where an extension is for new areas not involving extraction of coal, it will be considered an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage (surface operations area acreage for underground mining activities) or two (2) acres, whichever is greater.

(c) Cumulative acreage added by successive revisions may not exceed the above limitations.

(58) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Lands used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(c) Commercial agriculture activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale.

(59) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(60) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(61) "Irreparable damage to the environment," as used in 405 KAR 8:010, Sections 13(4) and 14(9) only, means any damage to the environment that cannot be corrected by actions of the applicant.

(62) "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

(63) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(64) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(65) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the

environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(66) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(67) "Notice of violation" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(68) "Noxious plants" means species classified under Kentucky law as noxious plants.

(69) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(70) "Operations" means surface coal mining and reclamation operations, all of the premises, facilities, roads and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or removal of coal.

(71) "Operator" means any person, partnership, or corporation engaged in surface coal mining and reclamation operations.

(72) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice; or any violation of KRS Chapter 350, Title 405, Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(73) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(74) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(75) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also

included.

(76) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(77) "Performance bond" means a surety bond, collateral bond, cash bond, letter of credit or a combination thereof, by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(78) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(79) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(80) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(81) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or Title 405, Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS 350 and Title 405, Chapters 7 through 24 are satisfied.

(82) "Person" means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization, or any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(83) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(84) "Petitioner" means a person who submits a petition under Title 405, Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation operations, or who submits a petition under Title 405, Chapter 24 to terminate such a designation.

(85) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(86) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have historically been used for cropland as that phrase is defined above.

(87) "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(88) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(89) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

(90) "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(91) "Public building" means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(92) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(93) "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(94) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(95) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(96) "Reclamation" means the reconditioning and restoration of areas affected by surface coal mining operations as required by KRS Chapter 350 and Title 405, Chapters 7 through 24 under a plan approved by the cabinet.

(97) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(98) "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(99) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(100) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(101) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(102) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the

entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to Title 405, Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(103) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(104) "Secretary" means the Secretary of the Cabinet for Natural Resources and Environmental Protection.

(105) "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(106) "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(107) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(108) "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(109) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of

the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "B horizon." The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(110) "Soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(111) "Spoil" means overburden that has been removed during surface coal mining operations.

(112) "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(113) "Steep slope" means any slope of more than twenty (20) degrees.

(115) "Substantially disturb" means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(114) "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(116) "Surety bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky where the surface or underground coal mining operation subject to the indemnity agreement is located.

(119) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(118) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine-site. Such activities shall not include the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an integrated company or other business entity which uses the coal in its own manufacturing or

power plants; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 2/3) percent of the tonnage of minerals removed for the purpose of commercial use or sale; or coal exploration. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(117) "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(120) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(121) "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(122) "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(123) "Topsoil" means the A soil horizon layers of the three (3) major soil horizons.

(124) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(125) "Toxic-mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(126) "Transfer, assignment or sale of rights"



means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(127) "Underground development waste" means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities.

(128) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(129) "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(130) "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions.

(131) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(132) "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(133) "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of ground water.

(134) [(133)] "Willful violation" means an act or omission which violates the Surface Mining Control and Reclamation Act (PL 95-87), KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or any permit condition, committed by a person who intends the result which actually occurs.

Section 2. Abbreviations. As used in Title 405, Chapters 7 through 24, the following abbreviations shall have the meanings given below:

ac - acre  
CFR - Code of Federal Regulations  
dB - decibels  
FDIC - Federal Deposit Insurance Corporation  
FSLIC - Federal Savings and Loan Insurance Corporation  
Hz - hertz  
KAR - Kentucky Administrative Regulations  
KPDES - Kentucky Pollutant Discharge Elimination System  
KRS - Kentucky Revised Statutes  
l - liter  
mg - milligram  
MRP - mining and reclamation plan  
MSHA - Mine Safety and Health Administration  
NPDES - National Pollutant Discharge Elimination System  
OSM - Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior  
SCS - Soil Conservation Service  
SMCRA - Surface Mining Control and Reclamation Act of 1977, PL 95-87  
USDA - United States Department of Agriculture  
USDI - United States Department of the Interior  
U.S. EPA - United States Environmental Protection Agency  
USGS - United States Geological Survey

Section 3. Statement of Emergency. (1) The amendments to this regulation incorporate changes consistent with KRS Chapter 350, SMCRA, and federal regulations and define terms used in other regulations which execute the terms of the Settlement Agreement entered into on or about October 31, 1984 in Civil Action 84-58 in the U.S. District Court for the Eastern District of Kentucky. This settlement agreement states that the cabinet, by May 1, 1985, shall make a good faith effort to place regulations into effect addressing premining hydrologic requirements and during-mining ground water monitoring waivers. In order to fully and accurately implement the settlement agreement, it is necessary that certain terms used in the regulations resulting from the settlement agreement be defined; the amendments to this regulation perform this function.

(2) The amendments are being promulgated in an emergency administrative regulation because the time frame for promulgation of an ordinary administrative regulation would not be concordant with the promulgation schedule established in the settlement agreement, and failure to comply with this schedule may place the cabinet in contempt of the U.S. District Court.

(3) This emergency regulation will be replaced by an ordinary administrative regulation.

CHARLOTTE E. BALDWIN, Secretary  
APPROVED BY AGENCY: May 1, 1985  
FILED WITH LRC: May 7, 1985 at 10 a.m.



**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement**

**405 KAR 8:030E. Surface coal mining permits.**

RELATES TO: KRS 350.060, 350.465

PURSUANT TO: KRS Chapter 13A [13.082],  
350.020, 350.028, 350.060, 350.465

EFFECTIVE: May 7, 1985

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) This regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

- (a) The permit applicant, including his or her telephone number;
- (b) Every legal or equitable owner of record of the property to be mined;
- (c) The holders of record of any leasehold interest in the property to be mined;
- (d) Any purchaser of record, under a real estate contract, of the property to be mined;
- (e) The operator, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his or her telephone number; and
- (f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

- (a) Names and addresses of every officer, partner, director, or other person performing a

function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State; and if a foreign corporation, a certified copy of the certificate of authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application and by any person identified in subsection (3)(c) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all sections.

(7) Each application shall contain proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each application shall contain a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application

shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under Title 405, Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed

permit area and adjacent areas as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological features within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historical, and cultural preservation agencies.

Section 12. General Requirements for Premining Geologic and Hydrologic Information [Geology and Hydrology]. (1) The application shall contain premining geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by KAR Title 405 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and ground water monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the premining data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet;

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and

submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that such data extrapolation techniques are valid and that information obtained through such techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 146 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

[(1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 16 of this regulation.]

[(2) (a) Information on hydrology including water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the cabinet, to the extent that this data is available from an appropriate federal or state agency.]

[(b) If this information is not available from such agencies, the applicant may gather and submit this information to the cabinet as part of the permit application.]

[(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.]

Section 13. Premining Geologic [Geology] Information. (1) The application shall contain premining geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and such aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including such aquifers.

3. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of

aquifers which may be adversely affected.

4. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet will not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of such aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to such aquifers.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section

including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

[(1) The geology description shall include a general statement of the geology within the proposed permit area and adjacent areas down to and including the first aquifer which may be affected below the lowest coal seam to be mined.]

[(2) (a) Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined, to provide the following data in the description:]

[1. Location of subsurface water, if encountered;]

[2. Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;]

[3. Physical properties of each stratum within the overburden;]

[4. Chemical analyses of each stratum within the overburden down to and including the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity producing materials; and]

[5. Analyses of the coal seam, including, but not limited to, an analysis of the total sulfur and pyritic sulfur content.]

[(b) If required by the cabinet, geologic information shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.]

[(c) An applicant may request that the requirement for a statement of the results of test borings or core samplings required under paragraph (a) of this subsection be waived by the cabinet. The waiver may be granted only if the cabinet makes a written determination that the statement is unnecessary because other equivalent information is accessible to the cabinet in a satisfactory form.]

Section 14. Premining Ground Water Information. (1) The application shall contain premining ground water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Ground water information shall include an inventory of wells, springs, underground mines, or other similar ground water supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other ground water supply facilities.

(3) Ground water information shall include

seasonal ground water quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate ground water monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal ground water quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Ground water levels; and  
(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(4) The ground water information described in subsection (3) of this section will be required in whole or in part for coal seams in those cases where coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require ground water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

[(1) The application shall contain a description of the ground water hydrology for the proposed permit area and adjacent area, including, at a minimum:]

[(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;]

[(b) The lithology and thickness of the aquifers;]

[(c) Known uses of the water in the aquifers and water table; and]

[(d) The quality of ground water, if encountered.]

[(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the cabinet.]

Section 15. Premining Surface Water Information. (1) The application shall contain premining surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

[(1) Surface water information shall be

described, including the name of the stream or watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds, and springs, the location of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify the seasonal variations in water quantity and quality within the proposed permit area and adjacent areas.]

(3) [(2)] Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive runoff from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from such facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited, information pertaining to flood flows and additional water quality parameters.

[(a) Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations; and]

[(b) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas sufficient to identify seasonal variations. These data shall include, but not be limited to, the parameters listed in this paragraph. The cabinet may add parameters as appropriate to ensure collection of information which the cabinet determines is relevant.]

[1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;]

[2. Total suspended solids in milligrams per liter;]

[3. Acidity;]

[4. Alkalinity;]

[5. pH in standard units;]

[6. Total iron in milligrams per liter;]

[7. Total manganese in milligrams per liter; and]

[8. Sulfate in milligrams per liter.]

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other beneficial [legitimate] use.

(2) If contamination, diminution, or interruption of a surface or ground water source may result, then the application [description] shall identify and describe the adequacy of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses [to replace the existing sources].

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b).

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(a) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey for lands within the proposed permit area contains soil map units which have not been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined

by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

- (a) The type of mining method used;
  - (b) The coal seams or other mineral strata mined;
  - (c) The extent of coal or other minerals removed;
  - (d) The approximate dates of past mining; and
  - (e) The uses of the land preceding mining.
- (3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

- (a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;
- (b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;
- (c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;
- (d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;
- (e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;
- (f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;
- (g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;
- (h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;
- (i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;
- (j) Each public road located in or within 100 feet of the proposed permit area;
- (k) Each public or private cemetery or Indian

burial ground located in or within 100 feet of the proposed permit area;

(1) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

- (a) Elevations and locations of test borings and core samplings;
  - (b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;
  - (c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;
  - (d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;
  - (e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;
  - (f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;
  - (g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;
  - (h) Location and extent of existing or previously surface-mined areas within the proposed permit area;
  - (i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;
  - (j) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;
  - (k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:
    - 1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.
    - 2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.
    - 3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.
- (3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32,



33, 34, and 38 of this regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal waste, and non-coal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050;

(e) A plan for revegetation as required in 405 KAR 16:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air



Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (a) Location;
- (b) Plans of the structure which describe its current condition;
- (c) Approximate dates on which construction of the existing structure was begun and completed; and
- (d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of Title 405, Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

- (a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;
- (b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
- (c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and
- (d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120.

(2) The blasting plan shall also include:

- (a) Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;
- (b) Description of procedures and plans for recording and retention of information of the following during blasting:
  - 1. Drilling patterns, including size, number, depths, and spacing of holes;
  - 2. Charge and stemming of holes;
  - 3. Types of detonators and detonation controls; and
  - 4. Sequence and timing of firing holes.
- (c) Description of blasting warning and site access control equipment and procedures;
- (d) Description of types, capabilities, sensitivities, and locations of use of any blast

monitoring equipment and procedures proposed to be used in lieu of the formula provided in 405 KAR 16:120;

(e) Description of plans for recording and reporting to the cabinet the results of preblasting surveys, if required; and

(f) Description of unavoidable hazardous conditions for which deviations from the blasting schedule may be needed under 405 KAR 16:120, Section 4(2).

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

- (a) The character of bedrock and any adverse geologic conditions in the disposal area;
- (b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;
- (c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;
- (d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and
- (e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(9), rock toe buttresses or key way cuts are required, the application shall include the following:

- (a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and
- (b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities.

(1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the premining geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary in order to enable the operation to meet such requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4 and 5;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water

within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 6; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the premining geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For ground water systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to

determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of ground water and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic premining information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

[(1) Each plan shall contain a description, with appropriate maps and cross-section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with Title 405, Chapter 16, to ensure the protection of:]

[(a) The quality of surface and groundwater systems, both within the proposed permit area and adjacent areas, from the adverse effects of the proposed surface mining activities;]

[(b) The rights of present users of surface and groundwater; and]

[(c) The quantity of surface and groundwater both within the proposed permit area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with Section 16 of this regulation and 405 KAR 16:060, Section 8, where the protection of quantity cannot be ensured.]

[(2) The description shall include:]

[(a) A plan for the control, in accordance with Title 405, Chapter 16, of surface and groundwater drainage into, through and out of the proposed permit area;]

[(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, of surface and groundwater drainage from the area to be disturbed by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 16:070, according to the more stringent of the following:]

[1. Title 405, Chapters 16 through 20; or]

[2. Other applicable state and federal laws.]

[(c) A plan for the restoration of the approximate recharge capacity of the permit area in accordance with 405 KAR 16:060, Section 6.]

[(d) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 16:110.]

[(3) The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and groundwater systems under all seasonal conditions, including concentrations of dissolved solids, suspended solids, total iron, pH, acidity, alkalinity, total manganese, and

other parameters required by the cabinet.]

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments.

(1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3);

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.

(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or

engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

b) Where a land use different from the pre-mining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 16:210;

(c) The consideration which has been given to

making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a public roads transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the surface coal mining operation.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

Section 39. Statement of Emergency. (1) The amendments to this regulation incorporate changes consistent with KRS Chapter 350, SMCRA, and federal regulations and incorporate changes in compliance with the terms of the Settlement Agreement entered into on or about October 31, 1984 in Civil Action 84-58 in the U.S. District Court for the Eastern District of Kentucky. This settlement agreement states that the cabinet, by May 1, 1985, shall make a good faith effort to place regulations into effect addressing premining hydrologic requirements and during-mining ground water monitoring waivers. The amendments to this regulation establish premining hydrologic requirements in compliance with the terms of the settlement agreement.

(2) The amendments are being promulgated in an emergency administrative regulation because the time frame for promulgation of an ordinary administrative regulation would not be concordant with the promulgation schedule established in the settlement agreement, and failure to comply with this schedule may place the cabinet in contempt of the U.S. District

Court.

(3) This emergency regulation will be replaced by an ordinary administrative regulation.

CHARLOTTE E. BALDWIN, Secretary  
APPROVED BY AGENCY: May 1, 1985  
FILED WITH LRC: May 7, 1985 at 10 a.m.

NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement

405 KAR 8:040E. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151  
PURSUANT TO: KRS Chapter 13A [13.082],  
350.020, 350.028, 350.060, 350.151, 350.465  
EFFECTIVE: May 7, 1985

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability.

(a) This regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this regulation.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

- (a) The permit applicant, including his or her telephone number;
- (b) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;
- (c) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined;
- (d) Any purchaser of record under a real

estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined;

(e) The operator, if different from the applicant, who will conduct underground coal mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. For businesses other than single proprietorships, the application shall contain the following information where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State, and if a foreign corporation, a certified copy of the Certificate of Authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application, and by any person identified in subsection (3)(c) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all sections.

(7) Each application shall contain proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each

application shall contain: a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated pursuant thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated

thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under Title 405, Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying such underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.



Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

- (1) Type of permit or license;
- (2) Name and address of issuing authority;
- (3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and
- (4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing, premining environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historic, and cultural preservation agencies.

Section 12. General Requirements for Premining Geologic and Hydrologic Information [Geology and Hydrology]. (1) The application shall contain premining geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by KAR Title 405 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and ground water monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the premining data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that such data extrapolation techniques are valid and that information obtained through such techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 146 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

[(1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 16 of this regulation.]

[(2) (a) Information on hydrology including water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the cabinet, to the extent that this data is available from an appropriate federal or

state agency.]

[(b) If this information is not available from such agencies, the applicant may gather and submit this information to the cabinet as part of the permit application.]

[(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.]

Section 13. Premining Geologic [Geology] Information. (1) The application shall contain premining geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may fracture, incur subsidence, or otherwise be disturbed by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and such aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed, and chemical analysis of each stratum which may be fractured or otherwise disturbed by the mining operation for those areas overlying underground workings where overburden will not be removed, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet will not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may fracture, incur subsidence, or otherwise be disturbed by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may fracture, or otherwise be disturbed by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of such aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and such aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by



subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

[(1) The geology description shall include a general statement of the geology within the proposed permit area and adjacent areas, down to and including the first aquifer to be affected below the lowest coal seam to be mined. The geology for areas proposed to be affected by surface operations and facilities, those surface lands overlying coal to be mined, and the coal to be mined shall be separately described, as follows:]

[(a) Areas affected by surface operations or facilities. Geology of all strata to be affected by surface operations or facilities shall be described; and where any coal seam is to be extracted by surface operations, geology of all strata down to and including the stratum immediately below the coal seam shall be described, including the following data resulting from analyses of test borings, core samplings, or outcrop samples:]

[1. The location of areas where subsurface water will be exposed at the face-up area;]

[2. The logs of drill holes showing the lithologic characteristics of the strata to be affected;]

[3. The physical properties of each stratum within the overburden; and]

[4. Chemical analyses of each stratum to be affected, including the stratum immediately below the lowest coal seam to be mined, to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity-producing materials.]

[(b) Areas underlain by coal seams to be mined. The geology for all surface lands within the proposed permit area which are underlain by the coal seam to be extracted and the geology of the coal seam itself shall be described, including:]

[1. Location of subsurface water, if encountered;]

[2. The depth, classification, and geologic structure of the overburden;]

[3. Pyritic content and potential acidity or alkalinity of the stratum immediately above and below the coal seam to be mined and the clay content of the stratum immediately below the coal seam to be mined; and]

[4. Total sulfur and pyritic sulfur content of the coal seam.]

[(2) An applicant may request that the requirements of subsection (1)(a) of this section be waived by the cabinet. The waiver may be granted only if the cabinet makes a written determination that the information is unnecessary because other equivalent information is accessible to the cabinet in a satisfactory form.]

Section 14. Premining Ground Water Information. (1) The application shall contain premining ground water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable

to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Ground water information shall include an inventory of wells, springs, underground mines, or other similar ground water supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other ground water supply facilities.

(3) Ground water information shall include seasonal ground water quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate ground water monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal ground water quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Ground water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH, dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(4) The ground water information described in subsection (3) of this section will be required in whole or in part for coal seams in those cases where coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require ground water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

[(1) The application shall contain a description of the ground water hydrology for the proposed permit and adjacent area, including, at a minimum:]

[(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;]

[(b) The lithology and thickness of the aquifers;]

[(c) The uses of the water in the aquifers and water table; and]

[(d) The quality of ground water, if encountered.]

[(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the cabinet.]

Section 15. Premining Surface Water Information. (1) The application shall contain premining surface water information for the permit area and adjacent area which shall be

collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

[(1) Surface water information shall be described, including the name of the stream or watershed which will receive water discharges, the locations of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within areas affected by surface operations and facilities and adjacent areas. The description shall also include the location of all surface water bodies such as streams, lakes, ponds, and springs, within the proposed permit area and adjacent area.]

(3) [(2)] Surface water information [for areas affected by surface operations and facilities and adjacent areas] shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive runoff from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from such facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

[(a) Minimum, maximum, and average discharge conditions, which identify critical low flows and peak discharge rates of streams sufficient to identify seasonal variations; and]

[(b) Water quality data to identify the characteristics of surface waters in,

discharging into, or which will receive flows of surface or ground water from the affected area sufficient to identify seasonal variations. These data shall include, but not be limited to, the parameters listed in this paragraph. The cabinet may add parameters as appropriate to ensure collection of information which the cabinet determines is relevant.]

[1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;]

[2. Total suspended solids in milligrams per liter;]

[3. Acidity;]

[4. Alkalinity;]

[5. pH in standards units;]

[6. Total iron in milligrams per liter;]

[7. Total manganese in milligrams per liter; and]

[8. Sulfate in milligrams per liter.]

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area for domestic, agricultural, industrial, or other legitimate use.

(2) If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as

important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a pre-application investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no such soil survey has been made for these lands, the applicant shall cause such a survey to be made.

(a) When a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey as required by this section contains soil map units which have not been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing

of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both

surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for such data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at

locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28, 31, 32, 33, 34, 38 of this regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this regulation, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the

proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
  2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
  3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;
  4. Each coal storage, cleaning and loading area;
  5. Each topsoil, spoil, coal preparation waste, underground development waste, and non-coal waste storage area;
  6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;
  7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
  8. Each facility to be used to protect and enhance fish and wildlife related environmental values;
  9. Each explosive storage and handling facility;
  10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and disposal areas for underground development waste and excess spoil, in accordance with Section 28 of this regulation;
  11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;
  12. Location of each water and any subsidence monitoring point;
  13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.
- (c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.
- (4) Each plan shall contain the following information for the proposed permit area:
- (a) A projected timetable for the completion of each major step in the mining and reclamation plan;
  - (b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;
  - (c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;
  - (d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050;
  - (e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to

be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (a) Location;
- (b) Plans of the structure which describe its current condition;
- (c) Approximate dates on which construction of the existing structure was begun and completed; and
- (d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of Title 405, Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not

significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands.

(2) If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the cabinet agrees with such conclusion, no further information need be provided in the application under this section.

(3) In the event the survey shows such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including such measures as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface including such measures as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by

subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of non-cancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as:

1. The results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 405 KAR 18:130. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall

include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the premining geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary in order to enable the operation to meet such requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Section 4;

3. Control the discharge of sediment to streams located outside the permit area as

required by 405 KAR 18:060, Section 2; and

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 5, and 7, and 405 KAR 18:080.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the premining geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For ground water systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan



for the collection, recording, and reporting of ground water and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic premining information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

[(1) Each plan shall contain a description, with appropriate maps and drawings, of the measures to be taken during and after the proposed underground mining activities, in accordance with Title 405, Chapter 18, to ensure the protection of:]

[(a) The quality of surface and ground water, both within the proposed permit area and adjacent areas, from adverse effects of the proposed underground mining activities;]

[(b) The rights of present users to surface and ground water;]

[(c) The quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities;]

[(d) Water quality by locating openings for mines in accordance with 405 KAR 18:060, Section 5.]

[(2) The description shall include:]

[(a) A plan for the control, in accordance with Title 405, Chapter 18, of surface and ground water drainage into, through, and out of the proposed permit area;]

[(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, and surface and ground water drainage from the area to be affected by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 18:070, according to the more stringent of the following:]

[1. Title 405, Chapters 16 through 20; or]

[2. Other applicable state and federal laws.]

[(c) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 18:110.]

[(3) The description shall include a determination of the probable hydrologic consequences of the proposed underground mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved solids, suspended solids, total iron, pH, total manganese, acidity, alkalinity and other parameters required by the cabinet.]

[(4) Each plan shall contain a description, with appropriate drawings, of permanent entry seals and downslope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit area.]

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments.

(1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the

following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsection (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the premining land use is proposed, all supporting documentation submitted for approval of the

proposed use under 405 KAR 18:220;

(c) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining activities.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

Section 39. Statement of Emergency. (1) The amendments to this regulation incorporate changes consistent with KRS Chapter 350, SMCRA, and federal regulations and incorporate changes in compliance with the terms of the Settlement Agreement entered into on or about October 31, 1984 in Civil Action 84-58 in the U.S. District Court for the Eastern District of Kentucky. This settlement agreement states that the cabinet, by May 1, 1985, shall make a good faith effort to place regulations into effect addressing premining hydrologic requirements and during-mining ground water monitoring waivers. The amendments to this regulation establish premining hydrologic requirements in compliance with the terms of the settlement agreement.

(2) The amendments are being promulgated in an emergency administrative regulation because the time frame for promulgation of an ordinary administrative regulation would not be concordant with the promulgation schedule

established in the settlement agreement, and failure to comply with this schedule may place the cabinet in contempt of the U.S. District Court.

(3) This emergency regulation will be replaced by an ordinary administrative regulation.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 7, 1985 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL  
PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement

405 KAR 16:110E. Surface and ground water monitoring.

RELATES TO: KRS 350.100, 350.405, 350.420, 350.465,

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.420, 350.465

EFFECTIVE: May 7, 1985

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and ground water levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. General Requirements [Groundwater].  
(1) Surface and ground water monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located ground water monitoring wells, surface water monitoring stations, and quantity and quality parameters to demonstrate that:

(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area and adjacent area pursuant to 405 KAR 16:060;

(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 16:060, Section 1(3);

(c) Reclamation as required by KAR Title 405 is being accomplished and the operation is preventing material damage to the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);

(d) The mining operation, pursuant to 405 KAR 16:060, Section 8, has not proximately resulted in the contamination, diminution, or interruption of a ground or surface water supply which is used for domestic, agricultural, industrial or other beneficial purpose; and

(e) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.

(2) Surface and ground water monitoring shall be coordinated with premining data collection by conducting surface and ground water monitoring at locations where premining data was collected, or by other appropriate data collection and

analysis procedures which will allow a comparison of premining conditions with during-mining and postmining conditions.

(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and ground water quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is located, pursuant to 405 KAR 16:060, Section 7.

(4)(a) Surface and ground water monitoring data collection shall begin at the time of initial disturbance and continue during mining and reclamation until final bond release.

(b) Surface and ground water monitoring data shall be collected quarterly and the results submitted to the cabinet within one (1) month after data collection.

(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.

(6) The cabinet may require the installation of additional ground water monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is needed to meet the requirements of subsection (1) of this section.

[(1) Groundwater levels, infiltration rates, subsurface flow and storage characteristics, and the quality of groundwater shall be monitored in a manner approved by the cabinet, to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the permit area and adjacent areas.]

[(2) When surface mining activities may affect the groundwater systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit area, groundwater levels and groundwater quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells, or springs where appropriate, that are adequate to reflect changes in groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.]

[(3) As specified and approved by the cabinet, the permittee shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall submit the results to the cabinet, to demonstrate compliance with 405 KAR 16:060, Sections 5 and 6 and this regulation.]

Section 2. Ground Water Monitoring [Surface Water]. (1) Ground water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, ground water monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific

conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(3) If the applicant can demonstrate to the satisfaction of the cabinet by use of the premining geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

[(1) Surface water monitoring and reporting shall be conducted in accordance with the monitoring program submitted under 405 KAR 8:030, Section 32(2)(d) and approved by the cabinet. The cabinet shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:]

[(a) Be adequate to measure accurately and record water quantity and quality of the discharges from the permit area;]

[(b) Include, but not be limited to, monitoring and reporting of all water quality parameters for which effluent limitations must be met under 405 KAR 16:070, Section 1(1)(g);]

[(c) All cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred shall result in the permittee notifying the cabinet within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the permittee shall forward the analytic results concurrently with the written notification to the cabinet; and]

[(d) Result in quarterly reports to the cabinet, to include analytical results from each sample taken during the quarter. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 USC Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the permittee may submit to the cabinet on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet NPDES permit requirements.]

[(2) Surface water flow and quality shall continue to be monitored as long as the water quality standards and effluent limitations of 405 KAR 16:070, Section 1(1)(g) are applicable.]

[(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.]

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, surface water monitoring shall include the parameters of:

(a) Discharge; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and ground water monitoring requirements of this regulation.

Section 4. Statement of Emergency. (1) The amendments to this regulation incorporate changes consistent with KRS Chapter 350, SMCRA, and federal regulations and incorporate changes in compliance with the terms of the Settlement Agreement entered into on or about October 31, 1984 in Civil Action 84-58 in the U.S. District Court for the Eastern District of Kentucky. This settlement agreement states that the cabinet, by May 1, 1985, shall make a good faith effort to place regulations into effect addressing premining hydrologic requirements and during-mining ground water monitoring waivers. These amendments regulate, in accordance with this settlement agreement, the granting of waivers from during-mining ground water monitoring.

(2) The amendments are being promulgated in an emergency administrative regulation because the time frame for promulgation of an ordinary administrative regulation would not be concordant with the promulgation schedule established in the settlement agreement, and failure to comply with this schedule may place the cabinet in contempt of the U.S. District Court.

(3) This emergency regulation will be replaced by an ordinary administrative regulation.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 7, 1985 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL  
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405 KAR 18:110E. Surface and ground water monitoring.

RELATES TO: KRS 350.100, 350.151, 350.405, 350.420, 350.465,

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.151, 350.420, 350.465

EFFECTIVE: May 7, 1985

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing

performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and ground water levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. General Requirements [Groundwater].

(1) Surface and ground water monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located ground water monitoring wells, surface water monitoring stations, and quantity and quality parameters to demonstrate whether:

(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area and adjacent area pursuant to 405 KAR 18:060;

(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 18:060, Section 1(3);

(c) Reclamation as required by KAR Title 405 is being accomplished and the operation is preventing material damage to the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);

(d) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.

(2) Surface and ground water monitoring shall be coordinated with premining data collection by conducting surface and ground water monitoring at locations where premining data was collected, or by other appropriate data collection and analysis procedures which will allow a comparison of premining conditions with during-mining and postmining conditions.

(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and ground water quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is located, pursuant to 405 KAR 18:060, Section 6.

(4)(a) Surface and ground water monitoring data collection shall begin at the time of initial disturbance and continue during mining and reclamation until final bond release.

(b) Surface and ground water monitoring data shall be collected quarterly and the results submitted to the cabinet within one (1) month after data collection.

(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.

(6) The cabinet may require the installation of additional ground water monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is

needed to meet the requirements of subsection (1) of this section.

[(1) Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the cabinet, to determine the effects of underground mining activities on the quantity and quality of water in ground water systems in the permit area and adjacent areas.]

[(2) When underground mining activities may affect ground water systems which serve as aquifers which significantly ensure the hydrologic balance or water use either on or off the permit area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells, or springs where appropriate, that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of the underground mining activities if necessary to minimize disturbance to the prevailing hydrologic balance.]

[(3) As specified and approved by the cabinet, the permittee shall conduct additional hydrologic tests, including drilling, infiltration tests and aquifer tests, and the results shall be submitted to the cabinet to demonstrate compliance with this section.]

Section 2. Ground Water Monitoring [Surface Water]. (1) Ground water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, ground water monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(3) If the applicant can demonstrate to the satisfaction of the cabinet by use of the premining geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

[(1) Surface water monitoring and reporting shall be conducted in accordance with the monitoring program submitted under 405 KAR 8:040, Section 32(2)(c) and approved by the cabinet. The cabinet shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:]

[(a) Be adequate to measure accurately and record water quantity and quality of discharges from the permit area;]

[(b) Include, but not be limited to, monitoring and reporting of all water quality parameters for which effluent limitations must be met under 405 KAR 18:070, Section 1(1)(g);]

[(c) All cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred shall result in the permittee

notifying the cabinet within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the permittee shall forward the analytic results concurrently with the written notification to the cabinet; and]

[(d) Result in quarterly reports to the cabinet, to include analytical results from each sample taken during the quarter. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 USC Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the permittee may submit to the cabinet on the same time schedule as required by the NPDES permit, or within ninety (90) days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet NPDES permit requirements.]

[(2) Surface water flow and quality shall continue to be monitored as long as the water quality standards and effluent limitations of 405 KAR 18:070, Section 1(1)(g) are applicable.]

[(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the surface disturbed area and from underground mine workings shall be properly installed, maintained, and operated and shall be removed when no longer required.]

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, surface water monitoring shall include the parameters of:

(a) Discharge; and  
(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 CFR Parts 122, 123, and 434 and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and ground water monitoring requirements of this regulation.

Section 4. Statement of Emergency. (1) The amendments to this regulation incorporate changes consistent with KRS Chapter 350, SMCRA, and federal regulations and incorporate changes in compliance with the terms of the Settlement Agreement entered into on or about October 31, 1984 in Civil Action 84-58 in the U.S. District Court for the Eastern District of Kentucky. This

settlement agreement states that the cabinet, by May 1, 1985, shall make a good faith effort to place regulations into effect addressing premining hydrologic requirements and during-mining ground water monitoring waivers. These amendments regulate, in accordance with this settlement agreement, the granting of waivers from during-mining ground water monitoring.

(2) The amendments are being promulgated in an emergency administrative regulation because the time frame for promulgation of an ordinary administrative regulation would not be concordant with the promulgation schedule established in the settlement agreement, and failure to comply with this schedule may place the cabinet in contempt of the U.S. District Court.

(3) This emergency regulation will be replaced by an ordinary administrative regulation.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 7, 1985 at 10 a.m.

#### STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. The current Local Health Policy on meetings of local boards of health is in conflict with the statutes and must be changed immediately. The local health departments are in the process of negotiating new contracts for FY 86 and must be informed of the contractual procedures they are required to comply with during the contractual period. In order to implement these changes in a timely manner, they must be filed as an emergency regulation. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor  
E. AUSTIN, JR., Secretary

#### CABINET FOR HUMAN RESOURCES Department for Health Services

902 KAR 8:020E. Policies and procedures for local health department operations.

RELATES TO: KRS Chapter 212

PURSUANT TO: KRS 194.050, 211.090, 211.170, 211.180, 213.410

EFFECTIVE: May 9, 1985

NECESSITY AND FUNCTION: KRS 211.170 directs the Cabinet for Human Resources to establish policies governing the activities of local health departments. This regulation adopts various manuals setting policies and standards for health departments.

Section 1. Local Health Policy Manual. The policies set forth in the April 15 [February 15], 1985, edition of the "Local Health Policy Manual" governing the maintenance and operation of local health departments are hereby adopted

by reference.

Section 2. Financial Management Manual. The policies set forth in the April 15 [November 15], 1984, edition of the "Financial Management Manual" governing the operation of the financial management systems used by local health departments are hereby adopted by reference.

Section 3. Patient Services Reporting System Manual. The policies set forth in the May 1, 1984, edition of the "Patient Services Reporting System Manual" governing the collection of patient health/medical services delivered by local health departments are hereby adopted by reference.

Section 4. Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky. The policies and procedures set forth in the May 1, 1984, edition of the "Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky" governing the development and maintenance of medical records in local health departments are hereby adopted by reference.

Section 5. Planning Manual for Local Health Departments. The policies set forth in the February, 1984, edition of the "Planning Manual for Local Health Departments" governing the annual program planning process and procedures of local health departments are hereby adopted by reference.

Section 6. Standards Manual for Local Health Departments. The policies set forth in the May 15, 1984, edition of the "Standards Manual for Local Health Departments" governing the programmatic operations of local health departments are hereby adopted by reference.

Section 7. Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report. The policies set forth in the September, 1982, edition of the "Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report" are hereby adopted by reference.

Section 8. On-Line Environmental Health Management Information System. The policies set forth in the February 14, 1984, edition of the "On-Line Environmental Health Management Information System" manual are hereby adopted by reference.

Section 9. Consumer Product Safety Commission's Hazardous Substances Labeling Guide. The policies set forth in the May 25, 1979, edition of the "Consumer Product Safety Commission's Hazardous Substances Labeling Guide" are hereby adopted by reference.

Section 10. Consumer Product Safety Commission's In-Depth Investigations Manual. The policies set forth in the January 28, 1983, edition of the "Consumer Product Safety Commission's In-Depth Investigations Manual" are

hereby adopted by reference.

Section 11. MCH Maternity Manual. The policies set forth in the May 11, 1984, edition of the "MCH Maternity Manual" governing the operation of the prenatal program conducted by local health departments are hereby adopted by reference.

Section 12. Sudden Infant Death Syndrome Program. The policies set forth in the January 1, 1985, edition of the "Sudden Infant Death Syndrome Program" manual governing the operation of the Sudden Infant Death Syndrome Program conducted by local health departments are hereby adopted by reference.

Section 13. Standards for Genetic Disease Testing, Counseling and Education Services Program. The policies set forth in the May 11, 1984, edition of the "Standards for Genetic Disease Testing, Counseling and Education Services Program" manual governing the operation of genetic disease testing and counseling clinics conducted by local health departments are hereby adopted by reference.

Section 14. Standards for Regional Pediatric Clinics. The policies set forth in the May 11, 1984, edition of the "Standards for Regional Pediatric Clinics" manual governing the operation of regional pediatric programs conducted by local health departments are hereby adopted by reference.

Section 15. Standards for Preventive Health Care in Children. The policies set forth in the May 11, 1984, edition of the "Standards for Preventive Health Care in Children" manual governing the operation of well child programs conducted by local health departments are hereby adopted by reference.

Section 16. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

Section 17. Summary of Amendment. (1) In relation to Section 1 of this regulation relating to the Local Health Policy Manual, revise LHP 300-1 "Meetings of Local Boards of Health" to clarify the frequency of meetings for boards of health, the nature and extent of delegation to an executive committee, the definition of a quorum, the requirements of open meetings legislation to executive committees, and proxy representation and voting.

(2) In relation to Section 2 of this regulation relating to the Financial Management Manual, delete Pages 65-74 (undated) and substitute new Pages 65-74 dated April 15, 1985 which fully define the contractual standards and the specific forms to be used, and require that all contracts be reviewed by the Department for Health Services. Delete pages 75-78, the requirement for a contractual arrangement between districts boards of health and the individuals who serve as district and medical directors. [add a new LHP "Appointment of Board of Health Members 300-7" to define the terms of office for county and district boards of health,



define the phrase "until their successor is appointed," specify the nomination process for both county and district boards, and describe the process for removal and reinstatement of positions to county boards of health.]

E. AUSTIN, JR., Secretary

C. HERNANDEZ, Commissioner

APPROVED BY AGENCY: May 8, 1985

FILED WITH LRC: May 9, 1985 at 2 p.m.

## AS AMENDED

### JUSTICE CABINET Kentucky Law Enforcement Council (As Amended)

#### 503 KAR 1:090. Approval of course curriculums.

RELATES TO: KRS 15.330(1)(a)

PURSUANT TO: KRS 15A.160

EFFECTIVE: May 14, 1985

NECESSITY AND FUNCTION: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for the approval and continuation of approval of schools which conduct law enforcement training courses required by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund, including minimum standards for curriculums for such courses. This regulation prescribes standards and procedures for such approval.

Section 1. Council Authority. The council shall have the authority to review all curriculums for all law enforcement courses to be provided by all schools certified by the council. The council shall have the authority to require all such curriculums to indicate, and to justify, the "passing" performance level on all graded exercises in the course.

Section 2. Submission Requirements. All proposed curriculums or proposed amendments to previously approved curriculums shall be received by the council at least thirty (30) days prior to the date of anticipated review. (The curriculum approval form--KLEC Form 31--is available from, and should be submitted to, the Kentucky Law Enforcement Council, Third Floor, Commonwealth Credit Union Building, High Street, Frankfort, Kentucky 40601.)

Section 3. School Endorsement. All course curriculums and amendments to course curriculums submitted by a school shall be endorsed by the director of the school or his designee.

Section 4. Approval Procedure. Upon review of the proposed course curriculum or curriculum amendment, the council shall vote whether to approve, approve subject to stated conditions, or disapprove. Course curriculum approval shall last for only three (3) years; curriculums approved before the effective day of this regulation shall remain approved until three (3)

years after the effective date. Curriculums which are to be continued shall be resubmitted for approval at least ninety (90) days before the expiration of the three (3) year period.

Section 5. Notification of Council Action. Within thirty (30) days of the council's vote, the council shall notify in writing the school which submitted the curriculum and the fund administrator whether the curriculum or curriculum amendment was approved.

NORMA C. MILLER, Secretary

APPROVED BY AGENCY: March 11, 1985

FILED WITH LRC: March 11, 1985 at 4 p.m.

### JUSTICE CABINET Kentucky Law Enforcement Council (As Amended)

#### 503 KAR 1:100. Certification of instructors.

RELATES TO: KRS 15.330(1)(a), (b), (d)

PURSUANT TO: KRS 15A.160

EFFECTIVE: May 14, 1985

NECESSITY AND FUNCTION: KRS 15.330(1)(a), (b) and (d) authorize the Kentucky Law Enforcement Council to certify instructors at certified schools. This regulation prescribes standards and procedures for such certification.

Section 1. Council Authority. The council shall have the authority to certify all persons instructing in law enforcement training courses at certified schools. However, since KRS 15.330(1)(b) provides that institutions of higher education shall be exempt from council requirements, representatives of such institutions may instruct at a certified school without council certification.

Section 2. Application for Certification. Applications for certification and for certification renewal shall be made to the council. (The instructor certification form--KLEC Form 1--is available from, and should be submitted to, the Kentucky Law Enforcement Council, Third Floor, Commonwealth Credit Union Building, High Street, Frankfort, Kentucky 40601.) To become certified, an applicant must meet the following requirements:

(1) Have three (3) years of law enforcement experience or experience in the specific field, subject matter or academic discipline to be

taught; and

(2) Have earned a high school diploma or its equivalent as determined by the council.

(3) Have successfully completed an instructors' course approved by the council.

Section 3. Waiver of Requirements. The director of a certified school or his designee, if he deems it justified by exigent circumstances such as the last-minute unavailability of a scheduled instructor, may waive any or all certification requirements for a person whose qualifications in the area of instruction are deemed sufficient for such waiver.

(1) The certified school shall keep a written record of all such waiver situations. This record shall note:

(a) The terms of the waiver;

(b) The name and specific qualifications of the instructor;

(c) The subjects to be taught;

(d) The reasons for the waiver; and

(e) The dates on which the individual has had requirements waived in the past.

(2) The council shall have the authority to inspect the waiver records of all certified schools.

(3) A pattern of questionable waivers by a certified school shall be justification for council revocation of the school's certification under 503 KAR 1:080.

Section 4. [3.] Application Process. Applications for instructor certification and renewal of certification shall be reviewed by the council. The council, at its first regular meeting after the review has been completed, shall vote whether to approve the applicant.

Section 5. [4.] Granting of Certification. If the council grants certification to an applicant, the council shall notify the applicant in writing within fifteen (15) days of the council's action.

Section 6. [5.] Instructor Certificate. The council shall issue a certificate stating that the person has been approved to instruct.

Section 7. [6.] Denial of Certification. The council shall deny certification to an applicant who fails to meet the requirements and shall revoke certification for demonstrated incompetence, immoral conduct, or other good cause. Any instructor who fails to instruct during the one (1) year period of certification shall be required to apply for reinstatement of certification and to meet such requirements as are deemed necessary by the council. When the council denies certification to an applicant or revokes certification or denies recertification or reinstatement of certification to an instructor, the council shall notify the person of the council's action in writing within fifteen (15) days.

Section 8. [7.] Length of Certification. Certification shall be for a period of one (1) year. At the end of the one (1) year period, certification may be renewed by the council if the instructor has instructed in an approved course provided by a certified school during that year and if the instructor, if he

instructed at a certified school, has been recommended by the director of the certified school. After five (5) years of continuous certification, the council may certify an instructor for a five (5) year period.

Section 9. [8.] Monitoring of Instructors. The council shall, when practical, monitor each instructor during the one (1) year period of certification to determine if the instructor is teaching to the stated goals and objectives of the course and is meeting generally accepted standards of the teaching profession.

Section 10. [9.] Instructor Directory. Each certified instructor shall be listed in an official directory of the council which shall identify each subject that the instructor has been certified to instruct. The directory shall be published in the form of a notebook, allowing for changes through the use of supplements. The council shall publish annual supplements to the directory by December 31 of each year and the supplements shall include all certification changes, including additions, deletions and renewals, for the year. The council shall provide each certified school and the fund administrator with a copy of the directory.

NORMA C. MILLER, Secretary

APPROVED BY AGENCY: March 11, 1985

FILED WITH LRC: March 11, 1985 at 4 p.m.

**JUSTICE CABINET**  
**Kentucky Law Enforcement Council**  
**(As Amended)**

**503 KAR 1:110. Basic training: graduation requirements; records.**

RELATES TO: KRS 15.330(1)(e), 15.440(4)

PURSUANT TO: KRS 15A.160

EFFECTIVE: May 14, 1985

NECESSITY AND FUNCTION: KRS 15.330(1)(e) authorizes the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training. KRS 15.440(4) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers employed on or after July 1, 1972, to successfully complete at least 400 hours of basic training within one (1) year of the date of employment at a school certified or recognized by the council. This regulation prescribes requirements for graduation from a basic training course and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. A trainee in a basic training course shall participate in a minimum of 400 hours of training. A trainee may have excused absences from the course with approval of the director of the certified school or his designee. An excused absence from the course which causes a trainee to miss any of the 400 hours of basic training shall be made up through an additional training assignment. To successfully complete a basic training course, a trainee must:

(1) Participate in a minimum of 400 hours of training.

(2) Attain a passing overall grade. Fifty (50) percent of the overall grade shall be the grade on the final examination; the other fifty (50) percent shall be the grade on all graded training areas covered during the course. A trainee may not take the final examination until he has passed all such graded training areas. A trainee who, after taking the final examination, does not have a passing overall grade must repeat the entire course. [Pass the final examination.]

(3) Successfully complete all graded training areas covered during the course. Only upon failure of an examination and a re-examination shall a trainee be considered to have failed a training area. A trainee who has failed a graded training area must arrange with the school to repeat, and must successfully complete, that training area during a later basic training course. A graded training area that is failed must be repeated and passed within 180 days of the initial failure. If the graded training area that is failed is physical training, M.A.R.C. (the mechanics of arrest, restraint, and control), or any other training area that is covered in more than two (2) of the weeks of the course, the repeating of the training in that area is optional with the trainee's agency head, but in any event the trainee must pass an examination on the failed area within 180 days of the initial failure. [Pass practical proficiency examinations in the use of firearms, in the operation of a police vehicle, in the mechanics of arrest, restraint and control (M.A.R.C.), and in first aid. Failure of any one (1) of these four (4) examinations shall constitute failure of the entire course.]

(4) Successfully complete all other assignments, exercises, and projects included in the course. [In regard to examinations other than those considered in subsections (2) and (3) of this section, fail no more than one (1) such examination. That is to say, failing two (2) of the examinations considered in this subsection (such as weekly examinations) shall constitute a failure of the course.]

[(5) Comply with all rules and regulations of the certified school, the fund, and the council. A trainee who fails to meet the requirements of subsection (3) or (4) of this section shall be immediately dismissed from the course.]

Section 2. Maintenance of Records. A certified school shall, at the conclusion of each basic training course, complete in triplicate the KLEC Form 29, "Application for Basic Training," for each trainee who has attended the course. The forms shall be sent to the council. After verification by the council, one (1) copy of the form shall be sent to the fund administrator, one (1) copy shall be sent to the head of the trainee's agency, and one (1) copy shall be retained by the council for central training records purposes. All training records required for fund purposes shall be retained by the certified school and a copy shall be sent to the fund administrator. All such records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes. All records shall be maintained in accordance with standards established by the State Archives and Records Commission (see KRS 171.410 to 171.740).

NORMA C. MILLER, Secretary  
APPROVED BY AGENCY: March 11, 1985  
FILED WITH LRC: March 11, 1985 at 4 p.m.

JUSTICE CABINET  
Kentucky Law Enforcement Council  
(As Amended)

503 KAR 1:120. In-service training: graduation requirements; recognized courses; records.

RELATES TO: KRS 15.330(1)(e), 15.440(5)  
PURSUANT TO: KRS 15A.160  
EFFECTIVE: May 14, 1985

NECESSITY AND FUNCTION: KRS 15.330(1)(e) authorizes the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training. KRS 15.440(5) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers to successfully complete at least forty (40) hours of in-service training each calendar year at a school certified or recognized by the Council. This regulation prescribes requirements for graduation from an in-service training course and for maintenance of in-service training records and establishes procedures for recognizing training at non-certified schools.

Section 1. In-Service Training Graduation Requirements. A trainee in an in-service training course shall participate in the minimum hours prescribed for the course. A trainee may have excused absences from the course with [prior] approval of the director of the certified school or his designee. An excused absence which causes a trainee to miss any of the required hours of in-service training shall be made up through an additional training assignment. A trainee shall be allowed excused absences from no more than twenty (20) percent of the hours of an in-service course. To successfully complete an in-service training course, a trainee must:

(1) Participate in at least the minimum hours prescribed for the training course.

(2) Pass the final examination or a re-examination.

(3) Successfully complete all graded training areas and all other assignments, exercises, and projects included in the course. [Pass all required projects, practical examinations, and exercises.]

[(4) Comply with all rules and regulations of the certified school, the fund and the council.]

Section 2. In-Service Training Courses at Recognized Schools. The council shall have the authority to recognize schools providing in-service training which are not certified by the council. A trainee who desires to attend an in-service training course at a school that is not certified shall make a written request to the council at least thirty (30) days prior to the first day of the course. The council shall have the authority to grant a request made after the course has been attended, but failure to submit the request at least thirty (30) days in advance of the course shall be justification for not recognizing the course. The council shall

review the request and determine whether the school and the course shall be recognized based upon the following:

- (1) The quality and reputation of the training school or institution;
- (2) The relationship of the course to the officer's rank and responsibility; and
- (3) The unavailability of the course at a certified school. If, upon review of the request, the council determines that the trainee may attend an in-service training course at a school or institution that is not certified, the council shall notify the trainee's agency, the department, and the fund administrator of its action. A trainee who fails to meet requirements established by the council for attendance at the recognized course shall not have met the requirements of KRS 15.440(5).

Section 3. Maintenance of Records. A certified school shall, at the conclusion of each in-service training course, complete in triplicate the KLEC Form 28, "Application for In-Service Training," for each trainee who has attended the course. The forms shall be sent to the council. After verification by the council, one (1) copy of the form shall be sent to the fund administrator, one (1) copy shall be sent to the head of the trainee's agency, and one (1) copy shall be retained by the council for central training records purposes. All training records required for fund purposes shall be retained by the certified school and a copy shall be sent to the fund administrator. All such records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes. All records shall be maintained in accordance with standards established by the State Archives and Records Commission (see KRS 171.410 to 171.740).

NORMA C. MILLER, Secretary  
 APPROVED BY AGENCY: March 11, 1985  
 FILED WITH LRC: March 11, 1985 at 4 p.m.

**JUSTICE CABINET**  
**Law Enforcement Foundation Program Fund**  
**(As Amended)**

**503 KAR 5:080. Definitions; repealer.**

RELATES TO: KRS 15.410 to 15.510  
 PURSUANT TO: KRS 15.450(1)  
 EFFECTIVE: May 14, 1985

NECESSITY AND FUNCTION: This regulation provides definitions of certain terms as used in 503 KAR Chapter 5, which pertains to the Law Enforcement Program Foundation Fund. This regulation also repeals the regulations previously in this chapter.

Section 1. Definitions. The following definitions shall apply in this chapter:

- (1) "Cabinet" means the Kentucky Justice Cabinet.
- (2) "Secretary" means the Secretary of the Kentucky Justice Cabinet.
- (3) "Council" means the Kentucky Law Enforcement Council as established in KRS 15.315.
- (4) "Fund" means the Law Enforcement Foundation Program Fund of the Kentucky Justice Cabinet as established in KRS 15.430.
- (5) "Fund administrator" means the person

responsible for administering the fund. KRS 15.450(1) provides that the fund shall be administered by the secretary or his designated representative.

(6) "Salary supplement funds" means money disbursed from the fund to local units of government for salary supplement purposes. A "salary supplement" is the fund money disbursed by a local unit of government to an individual police officer.

(7) "Local unit" means the local unit of government of any city or county, or any combination of cities and counties of the Commonwealth.

(8) "Police officer" means a "full-time member" (defined below) of a "lawfully organized police department" (defined below) of county, urban-county, or city government who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any elected officer, sheriff, deputy sheriff, constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.

(9) "Full-time member" means a sworn police officer who is paid a salary by the local unit for "working regularly" (defined below) as a law enforcement officer.

(10) "Working regularly" means the officer is working a minimum of forty (40) hours a week according to a uniform weekly schedule that is standard for police officers employed by that employing agency. No local unit shall arrange, by reduction of weekly hours or otherwise, the employment of a person who is otherwise considered a police officer so as to subvert the intent and purpose of KRS 15.410 to 15.510 or these regulations.

(11) "Lawfully organized police department" means a law enforcement unit organized in accordance with statutory authority, and one which has a separate and identifiable physical and management identity from other law enforcement units, including a separate chief.

[(12) "Termination of police service" means ending employment as a police officer (due to resignation, dismissal, etc.) but does not include a transfer from one (1) police agency to another when such transfer is made without intervening employment in a non-police officer capacity.]

Section 2. Repealer. 503 KAR 5:010, 5:020, 5:030, 5:040, 5:050, 5:060 and 5:070 are hereby repealed.

NORMA C. MILLER, Secretary  
 APPROVED BY AGENCY: March 11, 1985  
 FILED WITH LRC: March 11, 1985 at 4 p.m.

**JUSTICE CABINET**  
**Law Enforcement Foundation Program Fund**  
**(As Amended)**

**503 KAR 5:100. Disbursement of salary supplement funds; audits.**

RELATES TO: KRS 15.460, 15.470, 15.490, 15.500(1)

PURSUANT TO: KRS 15.450(1)

EFFECTIVE: May 14, 1985

NECESSITY AND FUNCTION: KRS 15.460, 15.470 and 15.500(1) pertain to disbursements from the Law Enforcement Foundation Program Fund; KRS 15.490(1) pertains to reports from local units to the Justice Cabinet; and KRS 15.490(2) pertains to payroll deductions. This regulation expands on these disbursement, reporting, and recordkeeping provisions.

Section 1. Disbursement from Fund to Local Unit. (1) Local unit's entitlement. Upon becoming eligible to participate in the fund, a local unit is entitled to receive annually, from the fund, salary supplement funds of \$2,500 for each qualified police officer it employs. If the fund is insufficient to provide funds at this rate, the cabinet shall establish the rate to be paid to the local units.

(2) Procedural requirements.

(a) A participating local unit shall submit to the fund administrator, within five (5) working days of the action, personnel action forms containing the information (hirings, firings, etc.) required by the fund administrator or his designee in order to determine the amount of salary supplement funds to be disbursed to the local unit.

(b) The fund administrator or his designee shall mail fund checks promptly to all eligible local units which have submitted timely personnel action forms.

(c) [The disbursement from the fund to the local unit shall be a reimbursement for salary supplements already paid by the local unit to individual police officers. Local units shall apply for reimbursement of funds on forms provided for this purpose by the fund administrator or his designee.] The local unit shall be required to acknowledge, to the Fund administrator, receipt of funds on a form[s] provided for this purpose. (These forms are available from the Kentucky Law Enforcement Foundation Program Fund, 107 Stratton Building, Eastern Kentucky University, Richmond, Kentucky 40475.)

(d) Local units shall provide such other information and reports as the fund administrator or his designee reasonably deems necessary.

Section 2. Disbursement from Local Unit to Police Officer. (1) Purposes for which local unit may use funds. The funds shall be used only as a cash salary supplement to police officers who meet the qualifications established by statute and by this regulation. The funds shall not be used to supplant existing salaries or as a substitute for normal salary increases. The funds shall be received, held, and expended only in accordance with the law.

(2) Qualifications for receiving a salary supplement. In order to be entitled to receive a salary supplement from a local unit, a person

must be:

(a) A "police officer"--that is, a "full-time member" of a "lawfully organized department" of county, urban-county, or city government (for definitions, see 503 KAR 5:080); and

(b) Employed by a local unit of government which is eligible to participate in the fund. (For participation requirements for local units, see 503 KAR 5:090.)

(3) Determining the amount of the salary supplement.

(a) Each police officer shall be paid by his local unit that amount of money which is paid from the fund to the local unit because of his qualifications. Thus a qualified officer who is employed "full time" for an entire year shall entitle his local unit to receive \$2,500 (or, if the fund is insufficient to provide funds at this rate, the amount established by the cabinet), and he shall be paid this same amount by his local unit.

(b) Funds shall be disbursed from the fund to local units on a monthly basis, and a police officer's salary supplement shall be determined on a monthly basis (for example, \$208.33 per month if the annual supplement is \$2,500). If an officer works less than a full month, his salary supplement shall be determined on a hourly basis. The hourly rate shall be determined by dividing the annual supplement by 2,080 (fifty-two (52) weeks multiplied by forty (40) hours per week); therefore, if the annual supplement is \$2,500, the hourly supplemental rate shall be \$1.20 for each hour he receives salary from his local unit.

(c) Salary, for salary supplement purposes, shall include pay for leave (such as annual, sick, compensatory, military, civil or educational leave). Leave without pay shall not be included.

(d) A police officer shall be paid a salary supplement while suspended from duty with pay, but shall not be paid one while suspended without pay.

(e) A police officer shall not be paid a salary supplement for pay for overtime work (hours over forty (40) per week).

(f) A police officer, provided he is qualified to participate in the fund during the period, shall be paid a salary supplement for that period of time during which he is not receiving a salary but is receiving workers' compensation benefits. This salary supplement shall be determined at the same monthly rate and, if a time period of less than a month is involved, hourly rate as is provided for in subsection (3)(b) of this section.

(g) The local unit shall keep hourly-employment records to document:

1. That a police officer is "full time" and thus qualifies for a salary supplement, and;

2. The salaried hours (work, leave with pay, suspension with pay, etc.) of each officer receiving a salary supplement.

(4) Payroll deductions. Under KRS 15.490(2), local units shall include the salary supplement paid to a police officer from the fund as a part of the officer's salary in determining all payroll deductions.

Section 3. Audit of Local Unit. (1) The Cabinet shall have the authority to audit, or to authorize an audit of, local units receiving salary supplement funds.

(2) For audit purposes, the local unit shall maintain accurate financial records which shall include, but not be limited to, books of original entry, source documents supporting accounting transactions, a general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records.

(3) These records shall be retained by the local unit until destruction is authorized by the cabinet.

NORMA C. MILLER, Secretary

APPROVED BY AGENCY: March 11, 1985

FILED WITH LRC: March 11, 1985 at 4 p.m.

#### JUSTICE CABINET

##### Law Enforcement Foundation Program Fund (As Amended)

503 KAR 5:110. Suspension or termination of salary supplement funds; criminal penalties.

RELATES TO: KRS 15.450(2), 15.990

PURSUANT TO: KRS 15.450(1)

EFFECTIVE: May 14, 1985

NECESSITY AND FUNCTION: This regulation expands on the suspension or termination authority given the Justice Secretary by KRS 15.450(2) and on the criminal penalties provided by KRS 15.990 for fraudulent activity in regard to the Law Enforcement Foundation Program Fund.

Section 1. Suspension or Termination of Salary Supplement Funds. (1) Under KRS 15.450(2), the

secretary or his designated representative shall have the authority to withhold or terminate the disbursement of salary supplement funds to any local unit that fails to comply with the requirements of KRS 15.410 to 15.510 or these regulations. [Such a failure to comply shall also be justification for requiring the return of all funds received by the local unit while in noncompliance.]

(2) Suspension or termination of salary supplement funds and the return of all funds involved may also result from a local unit knowingly furnishing false information required by KRS 15.410 to 15.510 or these regulations.

Section 2. Criminal Penalties. KRS 15.990 provides that any person who knowingly or wilfully makes any false or fraudulent statement or representation in any record, report, or application to the Council, Department, or other agency of the Cabinet under KRS 15.410 to 15.510 shall be fined not less than \$100 nor more than \$500, or imprisoned for not less than thirty (30) days nor more than ninety (90) days, or both. This statute may be used to prosecute a police chief, mayor, city manager, city clerk or anyone else who fraudulently receives, or attempts to receive, salary supplement funds for a local unit.

NORMA C. MILLER, Secretary

APPROVED BY AGENCY: March 11, 1985

FILED WITH LRC: March 11, 1985 at 4 p.m.

### AMENDED AFTER HEARING

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Air Pollution (Amended After Hearing)

401 KAR 50:016. Policies incorporated by reference.

RELATES TO: KRS 13A.130, 224.320, 224.330, 224.340

PURSUANT TO: KRS 13A.210, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the incorporation by reference of the policies that are used by the Division of Air Pollution.

Section 1. (1) The following document from the Kentucky Division of Air Pollution is incorporated herein by reference: "Policy Manual of the Division of Air Pollution Control," May 15 [March 15], 1985 ["Policies of the Division of Air Pollution," July 13, 1984].

(2) Copies of the document incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295. [may be obtained from: Division of Air Pollution, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.]

(3) This document contains the policies that are used by the Division of Air Pollution. Topics covered in each chapter are:

(a) Ambient air monitoring [for prevention of significant deterioration (PSD), post construction and compliance]. When ambient monitoring is required for PSD under 401 KAR 51:017, or for compliance demonstration under 401 KAR 50:050, this chapter contains specific guidance for a quality control program for automated analyzers, manual methods, gaseous standards and flow measurement devices; ambient monitoring guidelines for PSD including rationale, objectives, data representation and uses; and duration of monitoring, sampling methods and procedures, frequency of sampling, monitoring plan, meteorological parameters and measurement methods, network design and probe siting criteria, number and location of monitors

for criteria and noncriteria pollutants, and quality assurance requirements.

(b) Interpretation of the PSD regulation, 401 KAR 51:017. This chapter contains the interpretation of significant contribution, best available control technology information for coal-fired power plants; and federal determinations of the applicability of the federal PSD regulation, in cases where the regulation is not specific, for use by the Division of Air Pollution in interpreting the applicability of 401 KAR 51:017. This chapter also contains the federal interpretation of applicability PSD regulation relative to start-up after temporary shut-down of affected facilities; a list of compounds which are not considered volatile organic compounds for the purpose of PSD; PSD baseline and netting determinations; and categorization of certain industries applicable to the PSD regulation. This chapter also contains guidelines for determining best available control technology.

(c) Volatile organic compounds (VOC) emissions. This chapter contains the interpretation of the VOC regulations relative to averaging time, compliance with emission limits, application of diluents and sealants, determination of transfer efficiencies of surface coatings, determination of capture efficiency and equivalency calculations and a method for quantifying condensable (particulate) organic compounds [, and EPA's policy on Kentucky's accommodative state implementation plan].

(d) New source performance standards (NSPS) applicability determination. This chapter is used by the Division of Air Pollution to determine applicability of the NSPS regulations of Title 401, Chapter 59 in the issuance of construction and operating permits. It also includes policies [an EPA document which the Division of Air Pollution shall use in interpreting 401 KAR 59:005, Section 2(1), and guidance] on performance testing during soot-blowing at new and existing sources which will be used by the Division of Air Pollution in interpreting 401 KAR 50:045.

(e) Permitting [Application of proper permit fee base]. This chapter contains an interpretation of 401 KAR 50:036 as to the permit fee applicability to: [renewal of permits;] bubble, banking and trading transaction applications; sources subject to categorical compliance schedules; modified sources; and reactivated permit applications.

(f) Nonattainment areas. This chapter contains EPA's interpretation of the applicability of 40 CFR 52.24 relative to net increases, and the definition of potential to emit and will be used by the Division of Air Pollution in interpreting 401 KAR 51:052.

[(g) Applicability of emissions offset.] This chapter also contains a summary of federal emission offset determinations which the Division of Air Pollution applies in determining the applicability of 401 KAR 51:052.

[(g) Source testing reports [(h) Requirements for contents of source testing reports]. This chapter outlines the contents of a source test protocol and the minimum requirements for the contents of an acceptable compliance test report as required by 401 KAR 50:045.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: March 15, 1985  
FILED WITH LRC: March 15, 1985 at 10 a.m.

**EDUCATION AND HUMANITIES CABINET**  
**Department of Education**  
**Office of Local Services**  
**(Amended After Hearing)**

**702 KAR 5:130. Vehicles designed to carry fewer than ten passengers, standards for.**

RELATES TO: KRS 156.160

PURSUANT TO: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt regulations relating to the transportation of children to and from school and those deemed necessary or advisable for the protection of the physical welfare and safety of public school children. This regulation establishes the guidelines and requirements relative to the transportation of pupils by local school districts in vehicles designed to carry fewer than ten (10) passengers and which are not classified as school buses.

Section 1. For the purpose of this regulation, the word "vehicle" shall mean any vehicle owned by a school district board or contracted to the board which is significantly used to transport pupils to and from school [or school related events] and which is designed by the manufacturer to carry fewer than ten (10) passengers.

Section 2. Before any vehicle owned by a school district board or contracted to the board is used to transport pupils, the superintendent of a local school district shall request permission from the Division of Pupil Transportation for authorization to use such vehicle; and when the vehicle has been approved, it shall be entered on the district's school bus inventory.

Section 3. Any vehicle owned by a school district board or contracted to the board shall be restricted to the transportation of pupils from areas not accessible to a regular school bus to the nearest road available for safe transfer of pupils to a regular school bus or vice versa; provided, that this requirement shall not apply to transportation of qualifying handicapped pupils or emergency transportation of pupils.

Section 4. No vehicle owned by a school district board or contracted to the board shall be used to carry more pupils than the manufacturer's designed passenger capacity for that particular vehicle.

Section 5. Each vehicle owned by a school district board or contracted to the board shall have seat belts equal in number to the manufacturer's designed passenger capacity and installed in accordance with the original equipment manufacturer's specifications.

Section 6. Liability or indemnity insurance shall be purchased for each vehicle owned by the school district board or contracted to the board. The coverage limits should be at least



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these minimum amounts: (Reference 702 KAR 5:070, Section 2)

Property Damage Each Accident	\$100,000
Bodily Injury Liability Per Person	250,000
Bodily Injury Liability Per Accident	1,000,000
Uninsured Motorist Coverage Allowable Limit Per Person-Per Accident	
"No-fault" Coverage Per Person	10,000

Section 7. Before any vehicle owned by the school district board or contracted to the board is initially used to transport pupils, a safety inspection shall be made on the vehicle by a competent person to certify the vehicle is in safe operating condition. If the vehicle is found to be in unsafe operating condition, it shall not be used to transport pupils until necessary repairs are made. (Reference 702 KAR 5:030, Section 2)

Section 8. Each vehicle owned by the school district board or contracted to the board shall be inspected at least once each month that the vehicle is used to transport pupils, utilizing the same criteria for inspection as for standard school buses.

Section 9. Each vehicle owned by the school district board or contracted to the board when being used to transport pupils shall display a sign in clear view in the rear of the vehicle stating: This vehicle is being used to transport school children.

Section 10. The school district board shall, each school year, provide the owner of any vehicle that is contracted to the board with a written contract in which the responsibilities of the contractor are clearly defined. A copy of the contract and the method of determining the contract award shall be kept on file in the superintendent's office.

ALICE MCDONALD, Superintendent  
APPROVED BY AGENCY: May 7, 1985  
FILED WITH LRC: May 8, 1985 at noon

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sam Jackson

(1) Type and number of entities affected: All local school districts who utilize non-school bus vehicles to transport school children.

(a) Direct and indirect costs or savings to those affected: Unable to estimate (See attached)

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Approval request and inventory form.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Unable to estimate - See attached

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Approval request and inventory form.

(3) Assessment of anticipated effect on state

and local revenues: Unable to estimate

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: (See attached)

Tiering:

Was tiering applied? No. Need for uniformity in school districts in interest of safety.

## ATTACHMENT

We are unable to estimate direct and indirect cost or savings to Kentucky school districts utilizing non-school bus vehicles and who will be effected by this regulation. Many Kentucky school districts are utilizing non-authorized unsafe non-school bus vehicles to transport school children.

Should school districts use good business practices when contracting with persons to transport school children in non-school bus vehicles, use board-owned vehicles meeting the proposed regulation, re-evaluate school bus routes inaccessible to conventional school buses, additional cost if any could be minimized.

It appears that Congress intended all school bus standards to apply to buses that carry students to or from events related to their schools as well as from home to school and return.

Federal Motor Vehicle Safety Standard No. 17 expressly includes trips to events related to school as among those which confer school bus status on a vehicle. It is also the intent of Standard No. 17 to protect school children, and children are no less deserving of protection when on their way to a school related event than when on their way from home to school.

Many Kentucky school districts are currently using motor vehicles designed to carry less than ten passengers (automobiles, trucks, carryalls). Since motor vehicles designed to carry less than ten passengers are not regulated by National Highway Traffic Safety Administration, are not certified by the original equipment manufacturer as affording the safety protection of a school bus, and in absence of State Department of Education Regulations with regard to construction and usage places unwarranted liability on the Kentucky Department of Education and Kentucky school districts.

To insure the safety of Kentucky school children, it is imperative that regulations governing the design and use of non-school bus vehicles be adopted.

EDUCATION AND HUMANITIES CABINET  
 Department of Education  
 Office of Instruction  
 (Amended After Hearing)

702 KAR 20:320. Beginning teacher internship program.

RELATES TO: KRS 161.130

PURSUANT TO: KRS 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.030 requires that effective January 1, 1985, all new teachers and out-of-state teachers with less than five (5) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. This regulation serves to implement the statutory provisions for the beginning teacher internship by establishing the uniform statewide procedures and processes necessary to carry out the intent of the legislation.

Section 1. (1) Inasmuch as several states have adopted or are in the process of adopting plans similar to the teacher internship as provided in KRS 161.130, it is considered advisable that these states share in communication, materials, and research data relating to the internship. Accordingly, the Superintendent of Public Instruction may enter into formal and informal agreements with other states to promote a cooperative approach that will serve to enhance the efforts that Kentucky might otherwise make alone.

(2) A Kentucky plan for the supervision, assistance, and assessment of teacher interns shall be developed by the Superintendent of Public Instruction, for approval by the State Board of Education, and continuously improved, using whatever resources are available, both in state and out of state. Whenever documents, instruments, video, or other materials have been developed in other states and then adopted or adapted for use in Kentucky appropriate references shall give credit for the source.

(3) The Kentucky plan shall be characterized as a professional judgment model in that the statutes provide for the three (3) member beginning teacher committee to make the professional judgment as to whether the performance of the teacher intern has been satisfactory or unsatisfactory.

Section 2. (1) In arriving at its professional judgment, the committee shall take into consideration the progress [process] of the teacher intern throughout the entire school year and, particularly, the level of performance that has been achieved near the end of the school year. The beginning teacher committee shall determine the progress and improvement of the teacher intern pursuant to KRS 161.030, by a systematic observation of classroom performance, by a review of portfolio materials that are accumulated by the intern as requested by the committee, and by a review of the response of the teacher intern to the suggestions and recommendations made by the committee during its meetings with the intern throughout the period of internship.

(2) As a significant part of the process, the committee shall utilize the Performance Measurement System that has been developed by the state of Florida which emphasizes

observation of teacher behaviors in a series of instructional domains that have been identified through extensive analysis of the research literature. The data derived from the Performance Measurement System shall be used to reinforce the appropriate behaviors of the intern teacher and to assist the intern teacher in recognizing behaviors that are ineffective or counterproductive for pupil learning. The data from the current Performance Measurement System shall be utilized as a focus for assistance from the resource teacher. The Florida Performance Measurement System is incorporated herein by reference and identified as including the following documents:

(a) Domains: Concepts and Indicators of Effective Teaching (n.d.);

(b) Domains: Knowledge Base of the Florida Performance Measurement System, 1983; and

(c) Manual for Coding Teacher Performance on the Summative Observation Instrument, 1984.

These documents shall be applied by the Division of Teacher Education and Certification, State Department of Education, Frankfort, Kentucky 40601.

Section 3. [4.] (1) The three (3) member beginning teacher committee shall be made up of the school principal, a resource teacher, and a teacher educator.

(2) [(1)] The school principal shall serve as ex officio chairperson of the beginning teacher committee and shall be responsible for convening [identifying] the committee [members] and coordinating its [their] efforts by scheduling observations and committee meetings. Internship for teachers identified in 704 KAR 20:310 shall be administered by the Office of Vocational Education. The principal shall be responsible for collecting and filing such reports of the internship as are required by the Department of Education. Whenever it is not reasonably feasible and practicable for a school principal to fully serve on all required beginning teacher committees within his or her school, an assistant principal who holds regular certification as a school principal may be delegated to attend required committee meetings or beginning teacher observations, but such an assistant principal shall fully report and document such committee meetings and teacher observations to the school principal, who shall keep such use of an assistant principal to a minimum and who, in any event, shall cast the vote reserved for the principal on each beginning teacher committee.

(3) The resource teacher shall be appointed by the Superintendent of Public Instruction from a pool of qualified resource teachers who meet the statutory requirements of having completed at least four (4) years of successful teaching experience as attested by his or her immediate supervisor or by having achieved tenure, and by having achieved a master's degree or the equivalent Rank II non-degree program or the accumulation of 2,000 hours of continuing professional activities. The Department of Education shall also give priority in the selection of resource teachers who have the same certification as a teacher intern and also in the order of priority teachers located in the same school, teachers located in the same school district, and teachers located in another school district. Prior to making the appointment the



Department of Education shall determine the availability and willingness of persons to serve as resource teachers and for taking the prerequisite training. Within these stated requirements, the resource teacher shall be selected and assigned on a random basis; however, the Superintendent of Public Instruction should consult with the superintendent of the local district which employs the resource teacher before making the appointment.

(4) The teacher educator member shall be designated by the Department of Education from a list of teacher educators appointed by the presidents of each state approved teacher training institution. Teacher training institutions shall be encouraged to provide teacher educator members in the approximate proportion of the number of teacher education graduates produced the previous year. The Department of Education shall consult in advance with representatives of the teacher training institutions with respect to the school districts and the geographical area to be served by teacher educators from each teacher training institution. In the event that a teacher educator is not available to serve on a beginning teacher committee, the local district superintendent shall appoint an instructional supervisor, from the school district who has received special training in evaluating and assisting teachers to serve in lieu of the teacher educator.

(5) [(2)] Each principal of a school in which a teacher intern is employed and each member of the beginning teacher committee shall engage in the special training in evaluating and assisting teachers provided by the State Department of Education. [The training for principals should be scheduled at different times during the summer session and also after the opening of the school term. The local school district may make the decision as to when their personnel should participate.] The cost of [the] training for the committee members, [as well as travel, meals, and overnight lodging] shall be reimbursed by the State Department of Education in accordance with state travel regulations. The training for the resource teachers shall ordinarily be scheduled before the opening of the school term; the remuneration for attendance shall be considered as a part of the contract with each resource teacher. The training for teacher educator members will be scheduled through the various teacher education institutions. Training for vocational teacher educators shall be administered by the Office of Vocational Education, State Department of Education. [Remuneration shall be made for travel, meals, and overnight lodging.]

Section 4. [3.] (1) The teacher internship as described in KRS 161.030 shall [ordinarily] take place [during the first year of employment in a full-time teaching position] in a school that is accredited by the Kentucky State Board of Education and shall ordinarily occur during the first year of employment in a full-time teaching position. As a condition for issuing the one (1) year certificate for teacher internship, the intern shall identify the specific teaching assignment including the school, the school district, and

the school principal. The one (1) year internship shall include a minimum of 140 days of actual full-time teaching in the classroom assignment. Only blocks of time of one (1) semester to include a minimum of seventy (70) days of teaching in the classroom may apply toward the 140 day internship requirement, and consequently, the one (1) year certificate for the teaching internship shall not be valid for a contract of less than one (1) semester of seventy (70) days.

(2) The Department of Education shall prepare a handbook describing the internship process as delineated in these regulations and shall provide copies to the teacher intern and to each member of the beginning teacher committee. The local school district superintendent shall provide for an orientation meeting of the beginning teacher interns at the opening of the school term for the purpose of clearly informing them about the process. At that time, or as soon thereafter as the information may be available, the names of the members of the beginning teacher committee will be provided to the beginning teacher intern.

(3) The beginning teacher committee chairperson shall work out the meeting schedules so that all three (3) committee members will be present at each meeting. The first meeting shall be held by November 1 or by the end of the second month of employment; the second meeting shall be held by January 15 or by the end of four and one-half (4 1/2) months of employment; the third meeting shall be held by March 15 or by the end of six and one-half (6 1/2) months of employment; and the final meeting shall be held by April 10. In situations where the employment of the beginning teacher intern begins later than the usual opening of the school term in the district, the schedule should be adjusted appropriately; however, in no case shall an internship program begin later than the beginning of the sixth month of the school term. In instances where the beginning teacher internship is scheduled for less than the full term, provisions shall be made for at least two (2) meetings of the beginning teacher committee and for at least two (2) observations of the internship teacher by each of the committee members.

(4) Prior to the first, second, and third meetings of the beginning teacher committee each member shall make an observation visit of at least one (1) hour in duration in the classroom or at the work station of the intern. Additional observation visits prior to the fourth and final meeting or at other times, shall be optional with the committee. As a general guide such visits should be scheduled a week in advance so that the beginning teacher may be well prepared. At the first meeting of the beginning teacher committee, there shall be a review of the process and materials used for the observations, the establishment of expectations on the part of the beginning teacher intern and on the part of each of the committee members, a general outline or schedule for the events to take place during the remainder of the internship program, and suggestions for the work of the resource teacher with the beginning teacher. At the second and third committee meetings there shall be a review of progress based upon a combination of the observation visits and the reports of the resource teacher and of the intern teacher.

There shall also be a restatement of expectations for the performance of the teacher intern, and a restatement of suggestions of the committee members for the assistance by the resource teacher. At the fourth meeting the committee shall render a professional judgment with respect to the teacher internship.

(5) The decision of the beginning teacher committee as to satisfactory completion of the internship shall be reported to the local school superintendent or other employer and to the State Department of Education by April 15. If the committee feels that a person not satisfactorily completing the internship could benefit from a second year of internship, if hired by the same or a different district, it may attach to its decision the mitigating or extenuating circumstances contributing to unsatisfactory completion which the committee reasonably feels might allow the beginning teacher to satisfactorily complete a second year of internship.

(6) [(2)] If a teacher's first year of performance is judged by the committee to be unsatisfactory by reason of unsatisfactory performance, the teacher shall have the opportunity to repeat the internship during another year provided the teacher is employed by a school district within the next three (3) school years. If such employment is not obtained, the teacher must requalify by passing the National Teacher Examinations or the examinations stipulated in 704 KAR 20:305 and 704 KAR 20:310 and obtaining a new statement of eligibility for certification.

(7) [(3)] If the teacher's first year of performance is not of sufficient duration to satisfy the minimum requirement of 140 days of actual full-time teaching, the teacher shall have the opportunity to continue to completion the internship during another school year provided the teacher is employed by a school district within the next three (3) school years. If such employment is not obtained the teacher must requalify by passing the National Teacher Examinations or the examinations stipulated in 704 KAR 20:305 and 704 KAR 20:310 and obtaining a new statement of eligibility for certification.

[(4) As a condition for issuing the one (1) year certificate for teacher internship, the intern shall identify the specific teaching assignment including the school, the school district, and the school principal.]

Section 5. (1) Within the provisions of the budgetary act the Department of Education shall contract with the local school district, or make other appropriate arrangements, and the Office of Vocational Education shall reimburse state-operated vocational schools, district for the services of the resource teachers such to include a minimum of seventy (70) clock hours of direct services to each teacher intern and, in addition, for participation in committee supervision and assessment meetings and in the training program for resource teachers. Such contract shall provide for extra service payments above and beyond the provisions of the local salary scale. The contract shall also provide for the employment of substitute teachers to provide at least twenty (20) clock hours of released time for the resource teacher to observe and assist in the classroom of the teacher intern.

(2) The Department of Education shall contract with the colleges and universities for partial reimbursement of travel expenses and staff time. Each institution shall make its own determination as to the assignment of personnel and reimbursement for travel expenses.

Section 6. Complaints relative to failure of the beginning teacher committee to comply with and follow all prescribed statutory and regulatory requirements and procedures in assisting and assessing an intern shall be directed to, and assessed by, the Department of Education which shall, whenever practical, make a determination thereon within sixty (60) days following the receipt of each complaint.

ALICE MCDONALD, Superintendent

APPROVED BY AGENCY: May 5, 1985

FILED WITH LRC: May 8, 1985 at noon.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Alice McDonald, Attention: James Fouche

(1) Type and number of entities affected: All teachers initially certified after January 1, 1985, and having less than five (5) years previous teaching experience - approximately 1,200 in the public and private schools; all employers of these new teachers.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Local districts must provide evaluation reports on the progress of the new teacher interns.

(2) Effects on the promulgating administrative body: This is a major new program to be developed and administered by the Department of Education.

(a) Direct and indirect costs or savings:

1. First year: Approximately two (2) million dollars

2. Continuing costs or savings: Approximately 1.8 million dollars per year.

3. Additional factors increasing or decreasing costs: Costs will vary depending upon the number of new teachers employed each year.

(b) Reporting and paperwork requirements: 1. All of the developmental work relating to initiating an internship program;

2. Communications with 4,000 persons who are to be trained to be evaluators in the internship process;

3. Communications relating to the progress of teacher interns;

4. Issuance of regular teaching certificates to persons who successfully complete the internship.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(6) Any additional information or comments: There may be a problem in providing the financial assistance relating to the teacher internship of persons employed in private schools.

**Tiering:**

Was tiering applied? No. Regulation ultimately applies to individual teacher candidates who must satisfy the same internship requirements for certification.

**CABINET FOR HUMAN RESOURCES  
Department for Health Services  
(Amended After Hearing)**

**902 KAR 2:020. Reportable diseases.**

RELATES TO: KRS 211.180, 214.010, 333.130

PURSUANT TO: KRS 194.050, [13.082, 195.040,] 211.090

NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet [Department] for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other such diseases and health hazards as may be controlled. This regulation is being promulgated in order to achieve uniform reporting of selected diseases [effectuate uniform reporting of cases of communicable diseases in accordance with the provisions of KRS 214.010].

Section 1. Reportable Diseases: Time of Reporting. Because of their public health significance, the following diseases and occurrences are hereby declared to be reportable [diseases] within the time period specified below. All cases shall be reported.

(1) Diseases to be reported within twenty-four (24) hours. The following diseases and occurrences shall be reported individually within twenty-four (24) hours of arriving at a probable [suspicion of] diagnosis:

[(a) Diseases for which routine immunization is recommended: diphtheria, whooping cough (pertussis), poliomyelitis (paralytic or non-paralytic), measles (rubeola), tetanus, rubella, mumps.]

[(b) Others:] animal bites, anthrax, botulism (food-borne [and infant]), campylobacteriosis, cholera, diphtheria, encephalitis, gonococcal infections (all suspected or confirmed antibiotic-resistant strains); [infectious] hepatitis (viral), [legionnaire's disease, malaria,] measles (rubeola), meningitis and other invasive disease caused by Haemophilus influenzae type b, meningitis caused by Neisseria meningitidis [or H. influenzae], meningococcemia, pertussis (whooping cough), [ophthalmia neonatorum, gonococcal; meningococcal infections,] plague, poliomyelitis, [relapsing fever,] rabies [in] (human), [Reye's syndrome,] rubella (including congenital rubella syndrome), salmonellosis, shigellosis, [smallpox,] syphilis (primary, secondary, congenital and other infections [early

latent] suspected to be under one (1) year's duration and congenital, trichinosis, [infectious;] tuberculosis, typhoid fever, [typhus,] yellow fever, yersiniosis, [any suspected food-borne illness] and a suspected epidemic of any disease.

(2) Diseases to be reported within seven (7) days. The following diseases shall be reported individually within seven (7) days of [suspicion of the] diagnosis: AIDS (acquired immune deficiency syndrome), amebiasis, [asbestosis,] ascariasis, botulism (infant), brucellosis, chancroid, Chlamydia infections, [coal worker's pneumoconiosis,] giardiasis, gonococcal infections (other than antibiotic-resistant strains), granuloma inguinale, herpes simplex infections (genital), histoplasmosis, hookworm, Kawasaki's disease, lead poisoning, legionnaire's disease, leprosy, leptospirosis, Lyme disease, lymphogranuloma venereum, malaria, meningitis (caused by any organism other than N. meningitidis or H. influenzae), [mesothelioma,] mumps, psittacosis, Q fever, Reye's syndrome, Rocky Mountain spotted fever, [silicosis,] syphilis (all stages other than those in subsection (1) of this section, tetanus, toxic shock syndrome, tularemia, typhus.

[(a) All communicable diseases listed in the 1975 edition of the American Public Health Association publication, "Control of Communicable Diseases in Man," except as otherwise provided in this regulation.]

[(b) Other selected non-communicable diseases: animal bites (by species), rheumatic fever, encephalitis, post-infectious; rubella, congenital; syphilis, non-infectious; complications of any immunization.]

(3) Diseases to be reported collectively, on a weekly basis. The following diseases shall be reported collectively on a weekly basis: chickenpox, influenza[, conjunctivitis, scarlet fever, streptococcal pharyngitis; gastroenteritis, non-food-borne, non-epidemic].

(4) Diseases to be reported within three (3) months of diagnosis. The following diseases shall be reported individually within three (3) months of diagnosis: asbestosis, coal worker's pneumoconiosis, mesothelioma, silicosis.

Section 2. Reporting of Diseases. (1) Physicians. All physicians [Each and every physician] in active practice within the State of Kentucky shall report to the local health department of the county in which they practice, [the physician practices the identifying and pertinent epidemiological, clinical and laboratory information of any confirmed or suspected case under his care of] any disease listed as reportable in Section 1 of this regulation as well as any other disease which may be designated as reportable by the Commissioner of the Department for Health Services, upon his determination that such reporting is important for the public health. [Cases of venereal disease shall be reported in a confidential manner according to the provisions of the regulation of the Department for Human Resources relating to venereal diseases.]

(2) Hospitals. The person in charge of any licensed hospital in Kentucky shall ensure that any hospitalized patient with any of the diseases listed in Section 1 of this regulation,

as well as any other disease which may be designated as reportable by the Commissioner of the Department for Health Services, upon his determination that such reporting is important for the public health, shall be reported to the local health department of the county in which the hospital is located or to the Department for Health Services. [Reporting of diseases by others. The head of a family, midwife, nurse, superintendent, or person in charge of a hospital, laboratory, other institution or dispensary, superintendent, principal, teacher or other person in charge of any public, private, or parochial school, or any person in charge of any group of persons, shall report immediately any of the diseases listed as reportable to the local health department in whose jurisdiction the disease occurs.]

(3) Laboratories. The person in charge of any laboratory licensed in the state of Kentucky shall report to the local health department of the county in which the laboratory is located or to the Department for Health Services, any positive microbiologic or serologic test which indicates the presence of infection with an organism associated with any of the reportable diseases in Section 1 of this regulation, as well as any other disease which may be designated as reportable by the Commissioner of the Department for Health Services, upon his determination that such reporting is important for the public health. These reports shall be made within the timeframe for the corresponding disease as in Section 1 of this regulation.

(4) Information required in report. Except for diseases listed in Section 1(3) of this regulation and any sexually transmitted disease, all reports shall contain the name and address of the patient as well as pertinent clinical, laboratory and epidemiological information.

Cases of sexually transmitted disease may be reported with a reidentifiable code number assigned to the patient by the reporter and substituted in lieu of the patient's name and address.

(5) [(3)] Reporting of communicable diseases in animals. It shall be the duty of every person having knowledge of the existence of an animal of any species apparently afflicted with rabies, anthrax, eastern or western equine encephalitis, [erysipelas,] leptospirosis, brucellosis, tuberculosis, psittacosis, or other disease known to be communicable to man to report the pertinent information within twenty-four (24) hours [immediately] to the local health department in the county in which the animal is located.

Section 3. Transmission of Reports to the Department for Health Services [Human Resources]. Case reports described in Sections 1 and 2 of [The reports of cases of reportable disease required by] this regulation shall be transmitted from local health departments to the Department for Health Services [Human Resources] within three (3) days of receipt, or sooner if an epidemic is suspected or assistance is needed [the time intervals stated in this regulation]. Where there is no local health department or when for any reason the local health department is unable to receive or forward [transmit] any report of a [any] reportable disease, the report shall be submitted directly to the Department for Health Services [Human Resources].

C. HERNANDEZ, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 6, 1985

FILED WITH LRC: May 7, 1985 at 11 a.m.

## PROPOSED AMENDMENTS

### PERSONNEL BOARD (Proposed Amendment)

#### 101 KAR 1:070. Registers.

RELATES TO: KRS 18A.005, 18A.030, 18A.110, 18A.120

PURSUANT TO: KRS [13.082,] 18A.030, 18A.110

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to adopt comprehensive rules consistent with the provisions of KRS Chapter 18A. KRS 18A.030 requires the Commissioner of Personnel to prepare and recommend to the Personnel Board rules which provide for the manner of completing appointments and promotions; and for creation of eligible lists with successful candidates ranked according to their rating on the examination. KRS 18A.110 requires the commissioner to prepare and submit to the board rules which provide for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative rank on exams; and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the commissioner. These rules are necessary to comply with these statutory requirements.

Section 1. Responsibility for Maintenance of Registers. It shall be the duty of the appointing authorities to notify the commissioner as far in advance as possible of vacancies which may occur in the agencies. The commissioner shall be responsible for the establishment and maintenance of appropriate register for all positions and for the determination of the adequacy of existing registers.

Section 2. Open-Competitive Registers. After each open-competitive examination, the commissioner shall prepare a register of persons with passing grades. The names of such persons shall be placed on the register in the order of their final ratings, starting with the highest.

Section 3. Use of Related Registers. If a vacancy exists in a job class for which there is not appropriate register, the commissioner may prepare a register for the class from one (1) or more existing related registers. The commissioner shall select registers from classes for which the minimum qualifications are comparable to or higher than those required for the class in which the vacancy exists. The commissioner may, if appropriate, re-rate training and experience on the basis of the

minimum qualification required for the class in which the vacancy exists.

Section 4. Duration of Registers. (1) A register shall expire automatically at the end of two (2) years from the time of its establishment unless the register is extended by action of the board for a period not to exceed one (1) additional year.

(2) The life of registers for classes for which continuous recruitment and examination is conducted shall be indefinite but may be terminated by the commissioner. The names of eligibles shall be added to and removed from such registers on a continuous basis. Normally, the name of an eligible shall not remain on a register for a class in the continuous program for longer than two (2) years from the date of its entry on the register. Whenever the name of an eligible is removed from a register, the eligible shall be notified.

(3) When a register becomes so depleted that the preparation of usable certificates for a major portion of the imminent vacancies of the class is impracticable, the register will be considered exhausted. The register which has become exhausted shall be considered expired upon the administration of a superseding examination and the establishment of a register on the basis of that examination. When a register becomes exhausted, the commissioner shall send to each eligible remaining on such register a notification prior to the administration of a superseding examination.

Section 5. Replenishment of Registers. If the commissioner determines that a register, although not exhausted, is inadequate for the filling of anticipated vacancies, he may announce an open competitive examination for the purpose of replenishing such register.

Section 6. Removal of Names from the Register. (1) Reasons for removal. The commissioner may, on receipt of authoritative information, remove the name of an eligible from a register:

(a) For any of the causes stipulated in 101 KAR 1:060, Section 4;

(b) If the eligible cannot be located by postal authorities;

(c) If the eligible responds that he no longer desires consideration for a position in that class;

(d) If the eligible declines an offer of probationary appointment to the class for which the register was established;

(e) If it is shown, through agency objection or investigation, that the eligible is not qualified or is unsuitable for appointment to the class for which the register is established;

(f) If the eligible fails to reply within a period of five (5) working days to the written request of the appointing authority for an interview, or within seventy-two (72) hours to a telegraphic request, or does not report for such an interview within a reasonable time, or fails to appear for an interview which he has scheduled with the appointing authority;

(g) If the eligible accepts an appointment and fails to present himself for duty at the time and place agreed to without giving reasons for the delay satisfactory to the appointing authority;

(h) If the eligible indicates he is not

available for appointment or does not wish to be considered for appointment.

(2) The names of eligibles who have been considered for a probationary appointment three (3) times by any one (1) or more appointing authorities and have not been offered employment may be removed if it is determined they would not be suited to the type of work found in the class for which the register is established.

(3) When the Department of Personnel is authoritatively notified that an eligible has accepted a bona fide offer of probationary appointment to any position, effective on a specified date, his name may be removed from the register for all classes for which the maximum salary is the same or less than that of the class to which he has been appointed.

(4) Notifications. Whenever an eligible's name is removed from a register for reasons cited in subsections (1) and (2) of this section, the commissioner shall notify the eligible of this action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the commissioner or in accordance with the decision of the board upon appeal.

(5) Whenever an eligible notifies the Department of Personnel in writing that he is unavailable for employment or employment consideration, the department may remove the name of that eligible from the appropriate register without further notification to the person.

Section 7. Re-employment List. Any employee with status who has been laid off in accordance with 101 KAR 1:120, Section 2, shall be entitled to have his name placed on a re-employment list for the job class from which laid off or a job class for which the employee qualifies, provided he so requests in writing. [The name of an employee with status, who has been dismissed for reasons found to be insufficient by the board after hearing the appeal, may be placed on the re-employment list at the discretion of the board.] Eligibility to remain on the re-employment list shall expire five (5) [one (1)] years from the effective date of the layoff or separation or the date when ordered by the board to place the employee on the re-employment list.

Section 8. Promotion Register. After each competitive promotional examination held in accordance with 101 KAR 1:110, Section 1, the commissioner shall prepare a list of persons with passing grades arranged in the order of ratings received, starting with the highest.

ARTHUR HATTERICK, JR., Executive Director,  
Authorized Agent

APPROVED BY BOARD: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed amendment is scheduled for June 21, 1985, at 9:30 a.m., Room 360, Capitol Annex Building. Those interested in attending shall notify in writing at least five days before the scheduled hearing date: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.



REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies utilizing classified employees. Also those state employees having been laid off.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct and indirect costs or savings will depend on the number of employees who may be given notice of layoff during any period of time. The maintenance of re-employment registers by the Department of Personnel will be the most direct-related expense.

2. Continuing costs or savings: Same as 1. above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Administrative costs would be decreased if names are removed from the re-employment registers by virtue of re-employment and by virtue of employees withdrawing their names from consideration for state positions. Also will reduce competition for state positions with preferential consideration being given to laid off employees.

(b) Reporting and paperwork requirements: Routine processing of applicants and merit registers as it relates to re-employment rights by employees, agencies and the Department of Personnel.

(2) Effects on the promulgating administrative body: The effects on this agency will be in proportion to the number of appeals which may be filed with it related to employees and re-employment rights.

(a) Direct and indirect costs or savings: See answer to (1)(a)1, 2 and 3 above.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Directly in proportion to the number of layoff requests for re-employment rights maintenance of merit registers and appeal requests.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: It was determined that this method would provide equitable consideration to employees having re-employment and reinstatement rights.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: See (b) below.

(a) Necessity of proposed regulation if in conflict: See (b) below.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There appeared to be a possible conflict of uniform application as intended by KRS 18A.110(12). This proposed amendment provides equitable consideration for those affected.

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Not applicable.

PERSONNEL BOARD  
(Proposed Amendment)

101 KAR 1:090. Types of appointments.

RELATES TO: KRS 18A.005, 18A.110, 18A.115, 18A.120

PURSUANT TO: KRS [13.082,] 18A.030, 18A.075, 18A.110

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS 18A.030 requires the Commissioner of Personnel to prepare and recommend to the board rules which provide for the manner of the completing appointments and promotions. KRS 18A.110 requires the commissioner to prepare and submit to the board rules which provide for various types of appointment, such as probationary, emergency, provisional, reinstatement, and for such other rules, not inconsistent with KRS Chapter 18A, as may be proper and necessary. This rule is necessary to comply with these statutory requirements.

Section 1. Filling of Vacancies. All vacancies in the classified service which are not filled by transfer, promotion or demotion, shall be filled by probationary appointment, re-employment, reinstatement, temporary appointment, emergency appointment or provisional appointment.

Section 2. Probationary Appointment. The appointment to a permanent position in the classified service through certification in accordance with 101 KAR 1:080 from an open competitive register shall constitute probationary appointment.

Section 3. Provisional Appointment. When a vacancy is to be filled in a position of a class for which there are less than three (3) eligibles available for certification, the appointing authority, with the prior approval of the commissioner, may make a provisional appointment to fill the position. A provisional appointee must be certified by the commissioner as meeting at least the minimum qualifications established for the class of position. No such provisional appointment shall be continued longer than six (6) months nor shall successive provisional appointments of the same person be made to the same position.

Section 4. Emergency Appointment. The appointment of an employee without regard to the examination requirements of these rules to any position by reason of a governmental emergency shall constitute an emergency appointment. An emergency appointment may not exceed thirty (30) working days in duration and is non-renewable. Emergency appointments shall have the prior consent of the commissioner.

Section 5. Temporary Appointments. The appointment of a person to a temporary position shall constitute a temporary appointment. Such appointments shall be subject to the prior approval of the commissioner. Each appointee must be approved by the commissioner as meeting at least the minimum qualifications established for the class. Such appointment shall be for a specified period of time not to exceed six (6)

months and shall not be renewable.

Section 6. Re-employment. An employee with status who has been laid off by reasons of lack of funds or work, curtailment of program, abolishment of position or organization unit, or material change in duties or organization, and through no fault of his own, shall upon request have his name [may request that his name be] placed on a re-employment list for the class in accordance with 101 KAR 1:070, Section 7. It shall be the responsibility of the employee to request every six (6) months in writing, that the employee's name be retained on the re-employment list. If the employee does not make this request known, the employee's name shall be purged from the re-employment list. [The name of an employee with status, who has been dismissed for reasons found to be insufficient by the board after hearing the appeal, may be placed on the re-employment list at the discretion of the board. In either case,] Eligibility to remain on the re-employment list shall expire five (5) [one (1)] years from the effective date of the layoff or separation or the date when ordered by the board to place the employee on the re-employment list. The appointment of a person from such list shall constitute re-employment. A person so re-employed shall be subject to the successful completion of a probationary period in accordance with 101 KAR 1:100.

Section 7. Reinstatement. (1) An employee with permanent status who has resigned or been laid off through no fault of his own may be reinstated to his former class, or to any class for which he is qualified having the same or lower pay grade that is currently assigned to the employee's former class, within five (5) years from the effective date of his separation. Such reinstatement shall be made only with the prior approval of the commissioner and shall be subject to the successful completion of a probationary period in accordance with 101 KAR 1:100. The commissioner's approval of a reinstatement shall include a finding that the candidate meets the current qualifications for the class. If the reinstatement is to a different class series the applicant must pass the appropriate examination prior to reinstatement. Minimum requirements may be waived by the commissioner if the applicant has previously gained merit status in the job class to which he is seeking reinstatement.

(2) An employee with status who has been dismissed for reasons found by the board after hearing the employee's appeal to be political, religious, or ethnic reasons, or reasons due to race, sex, age (between forty (40) and seventy (70)), or handicap, shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his separation.

(3) An employee with status who has been dismissed for reasons found by the board after hearing the employee's appeal to be without just cause shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his separation.

Section 8. Seasonal Appointment. The appointment of a person to a position which recurs on a seasonal basis may be made of any

applicant meeting the established minimum qualification. Such appointments shall be subject to the prior approval of the commissioner and shall be made only after the seasonal recurring needs have been established by the appointing authority and shall not exceed eleven (11) months.

Section 9. Unclassified Service. Appointing authorities may fill positions in the unclassified service in the manner in which positions in the classified service are filled.

ARTHUR HATTERICK, JR., Executive Director, Authorized Agent

APPROVED BY BOARD: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed amendment is scheduled for June 21, 1985, at 9:30 a.m., Room 360, Capitol Annex Building. Those interested in attending shall notify in writing at least five days before the scheduled hearing date: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies utilizing classified employees. Also those state employees having been laid off.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct and indirect costs or savings will depend on the number of employees who may be given notice of layoff during any period of time. The maintenance of re-employment registers by the Department of Personnel will be the most direct-related expense.

2. Continuing costs or savings: Same as 1. above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Administrative costs would be decreased if names are removed from the re-employment registers by virtue of re-employment and by virtue of employees withdrawing their names from consideration for state positions. Also will reduce competition for state positions with preferential consideration being given to laid off employees.

(b) Reporting and paperwork requirements: Routine processing of applicants and merit registers as it relates to re-employment rights by employees, agencies and the Department of Personnel.

(2) Effects on the promulgating administrative body: The effects on this agency will be in proportion to the number of appeals which may be filed with it related to employees and re-employment rights.

(a) Direct and indirect costs or savings: See answer to (1)(a)1, 2 and 3 above.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Directly in proportion to the number of layoff requests for re-employment rights maintenance of merit registers and appeal requests.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: It was determined that this method would provide equitable consideration to employees having re-employment and reinstatement rights.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: See (b) below.

(a) Necessity of proposed regulation if in conflict: See (b) below.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There appeared to be a possible conflict of uniform application as intended by KRS 18A.110(12). This proposed amendment provides equitable consideration for those affected.

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Not applicable.

**GENERAL GOVERNMENT CABINET  
Board of Hairdressers and Cosmetologists  
(Proposed Amendment)**

201 KAR 12:150. School records.

RELATES TO: KRS 317A.090

PURSUANT TO: KRS 317A.050

NECESSITY AND FUNCTION: Schools must keep records of students' attendance and progress.

Section 1. A daily record of the attendance of the enrollment, including full-time, and part-time students and apprentice instructors must be kept by the schools in such a manner as to be available to the employees of the state board or to the members of the state board at all times.

Section 2. Schools are required to keep daily records, approved and signed by the instructor, showing practical work and work performed on clinic patrons. Said records must be available to the employees of the state board or to the members of the state board at all times.

Section 3. A detailed record shall be kept of all enrollments, withdrawals and dismissals.

Section 4. All records must be kept in a lockable fire-proof file on the premises of the school and must be available for inspection by the state board or its employees during hours of operation.

Section 5. The student permit and certification of hours completed shall be forwarded to the office of the board within ten (10) working days of the date of the students' withdrawal, dismissal, or completion of 1,800 hours.

Section 6. Cosmetology schools will be held fully responsible for the completeness, accuracy, and mailing or delivery to the state board office no later than the 10th of each month on forms supplied by the board showing the total hours obtained for the previous month and the total accumulated hours to date for students

enrolled. Only the hours recorded shall be submitted each month and such report shall not be amended without satisfactory proof of error.

Section 7. A copy of the students' hours, provided to the office of the board, must be posted monthly on a bulletin board in the school to be available to the students and employees or agents of the board.

CARROLL ROBERTS, Administrator

APPROVED BY AGENCY: May 6, 1985

FILED WITH LRC: May 14, 1985 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 24, 1985 at 2 p.m. The hearing will be held at 314 West Second Street, Frankfort, Kentucky. Contact Carroll Roberts, Administrator, Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Carroll Roberts

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Tiering was not applied as it was not necessary.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement  
(Proposed Amendment)**

405 KAR 7:020. Definitions and abbreviations.

RELATES TO: KRS Chapter 350

PURSUANT TO: KRS Chapter 13A, 350.028, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This

regulation provides for the defining of certain essential terms used in Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person seeking a

permit from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the cabinet for the issuance for exploration approval or a permit.

(8) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted where the cabinet has determined that they comply with KRS Chapter 350, 405 KAR 16:100, 405 KAR 16:060, Section 10, and 405 KAR 16:210; or 405 KAR 18:100, 405 KAR 18:060, Section 8 [9], and 405 KAR 18:220.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial [a specific] use.

(10) "Area" as used in Title 405, Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020, Sections 3 and 4 and 405 KAR 24:030, Section 8, occur throughout and form a significant feature.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Title 405, Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Title 405, Chapters 7 through 24.

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

(14) "Cemetery" means any area where human bodies are interred.

(15) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous,

subbituminous, or lignite by ASTM Standard D 388-77.

(16) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of Title 405, Chapters 7 through 24 where such activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water or other environmental resources.

(17) "Coal mine waste" means coal processing waste and underground development waste.

(18) [(17)] "Coal processing plant" means a collection of facilities, including all associated support facilities and operations, where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities.

(19) [(18)] "Coal processing waste" means [earth] materials which are separated from the product coal during the [, and slurred or otherwise transported from coal preparation plants, after physical or chemical processing,] cleaning, [or] concentrating, or other processing or preparation of coal.

(20) [(19)] "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(21) [(20)] "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(22) [(21)] "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(23) [(22)] "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(24) [(23)] "Complete application" means an application for exploration approval or permit, which contains all information required under KRS Chapter 350 and Title 405, Chapters 7 through 24.

(25) [(24)] "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(26) [(25)] "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (P.L. 95-87).

(27) [(26)] "Day" means calendar day unless otherwise specified to be a working day.

(28) [(27)] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(29) [(28)] "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(30) [(29)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 10 is released.

(31) [(30)] "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(32) [(31)] "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(33) [(32)] "Embankment" means a man-made deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(34) [(33)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(35) "Excess spoil" means spoil material disposed of in a location other than the coal extraction area, provided that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(36) [(34)] "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to January 18, 1983.

(37) [(35)] "Experimental practice," as used in 405 KAR 7:060, means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.

(38) [(36)] "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(39) [(37)] "Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States

acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(40) [(38)] "Federal lands program" means a program established by the Secretary of the Interior pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87, 91 Stat. 445 (30 USC Section 1201 et. seq.)) to regulate surface coal mining and reclamation operations on federal lands.

(41) [(39)] "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(42) [(40)] "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(43) [(41)] "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal.

(44) [(42)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(45) [(43)] "General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

(46) [(44)] "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(47) [(45)] "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency or office of the unit which, directly or through another unit of government, finance construction.

(48) [(46)] "Grazingland" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

(49) [(47)] "Ground water" means subsurface

water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(50) [(48)] "Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.

(51) [(49)] "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(52) [(50)] "Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(53) [(51)] "Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological and paleontological sites, cultural or religious districts, places, or objects, or sites for which historic designation is pending.

(54) [(52)] "Historically used for cropland:"

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or
2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or paragraph (a)2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(55) [(53)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(56) [(54)] "Hydrologic regime" means the entire state of water movement in a given area.

It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(57) [(55)] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(58) [(56)] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(59) [(57)] "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen at the time the original permit application was prepared and that is small in relation to the permit area (surface operations area for underground mining activities).

(a) Where an extension includes new areas from which coal will be removed, it will be considered as an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Where an extension is for new areas not involving extraction of coal, it will be considered an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage (surface operations area acreage for underground mining activities) or two (2) acres, whichever is greater.

(c) Cumulative acreage added by successive revisions may not exceed the above limitations.

(60) [(58)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Lands used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(c) Commercial agriculture activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale.

(61) [(59)] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ

gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(62) [(60)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(63) [(61)] "Irreparable damage to the environment," as used in 405 KAR 8:010, Sections 13(4) and 14(9) only, means any damage to the environment that cannot be corrected by actions of the applicant.

(64) [(62)] "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

(65) [(63)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(66) [(64)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(67) [(65)] "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(68) [(66)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(69) [(67)] "Notice of violation" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(70) [(68)] "Noxious plants" means species classified under Kentucky law as noxious plants.

(71) [(69)] "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(72) [(70)] "Operations" means surface coal mining and reclamation operations, all of the premises, facilities, roads and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or removal of coal.

(73) [(71)] "Operator" means any person, partnership, or corporation engaged in surface coal mining and reclamation operations.



(74) [(72)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice; or any violation of KRS Chapter 350, Title 405, Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(75) [(73)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(76) [(74)] "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(77) [(75)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(78) [(76)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(79) [(77)] "Performance bond" means a surety bond, collateral bond, cash bond, letter of credit or a combination thereof, by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(80) [(78)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(81) [(79)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(82) [(80)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(83) [(81)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or Title 405, Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS 350 and Title 405, Chapters 7 through 24 are satisfied.

(84) [(82)] "Person" means any individual, partnership, association, society, joint stock

company, firm, company, corporation, or other business organization, or any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(85) [(83)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(86) [(84)] "Petitioner" means a person who submits a petition under Title 405, Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation operations, or who submits a petition under Title 405, Chapter 24 to terminate such a designation.

(87) [(85)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(88) [(86)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have historically been used for cropland as that phrase is defined above.

(89) [(87)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(90) [(88)] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(91) [(89)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

(92) [(90)] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(93) [(91)] "Public building" means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(94) [(92)] "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(95) [(93)] "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(96) [(94)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(97) [(95)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(98) [(96)] "Reclamation" means the reconditioning and restoration of areas affected by surface coal mining operations as required by KRS Chapter 350 and Title 405, Chapters 7 through 24 under a plan approved by the cabinet.

(99) [(97)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(100) [(98)] "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(101) [(99)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(102) "Refuge pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semi-liquid material.

(103) [(100)] "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(104) [(101)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(105) [(102)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to Title 405, Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(106) [(103)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(107) [(104)] "Secretary" means the Secretary of the Cabinet for Natural Resources and

Environmental Protection.

(108) [(105)] "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(109) [(106)] "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or
2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(110) [(107)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(111) [(108)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(112) [(109)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master [three (3) major] soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by a lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) [(b)] "B horizon." The layer that typically is immediately beneath the E [A] horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) [(c)] "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(113) [(110)] "Soil survey" means a field or other investigation, resulting in a map showing

the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(114) [(111)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mine coal, that are excavated [has been removed] during surface coal mining and reclamation operations.

(115) [(112)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(116) [(113)] "Steep slope" means any slope of more than twenty (20) degrees.

(117) [(115)] "Substantially disturb" means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(118) [(114)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(119) [(116)] "Surety bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky where the surface or underground coal mining operation subject to the indemnity agreement is located.

(120) [(119)] "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(121) [(118)] "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine-site. Such activities shall not include the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an integrated company or other business entity which uses the coal in its own manufacturing or power plants; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and

two-thirds (16 2/3) percent of the tonnage of minerals removed for the purpose of commercial use or sale; or coal exploration. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(122) [(117)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(123) [(120)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(124) [(121)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(125) [(122)] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(126) [(123)] "Topsoil" means the A and E soil horizon layers of the four (4) master [three (3) major] soil horizons.

(127) [(124)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(128) [(125)] "Toxic-mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(129) [(126)] "Transfer, assignment or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(130) [(127)] "Underground development waste" means waste [rock mixtures of] coal, shale,

claystone, siltstone, sandstone, limestone, or similar [related] materials that are extracted from underground workings in connection with [excavated, moved, and disposed of during development and preparation of areas incident to] underground mining activities.

(131) [(128)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(132) [(129)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(133) [(130)] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions.

(134) [(131)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(135) [(132)] "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(136) "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of ground water.

(137) [(133)] "Willful violation" means an act or omission which violates the Surface Mining Control and Reclamation Act (P.L. 95-87), KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or any permit condition, committed by a person who intends the result which actually occurs.

Section 2. Abbreviations. As used in Title 405, Chapters 7 through 24, the following abbreviations shall have the meanings given below:

ac - acre  
CFR - Code of Federal Regulations  
dB - decibels  
FDIC - Federal Deposit Insurance Corporation  
FSLIC - Federal Savings and Loan Insurance Corporation  
Hz - hertz  
KAR - Kentucky Administrative Regulations  
KPDES - Kentucky Pollutant Discharge Elimination System  
KRS - Kentucky Revised Statutes  
l - liter  
mg - milligram  
MRP - mining and reclamation plan  
MSHA - Mine Safety and Health Administration  
NPDES - National Pollutant Discharge Elimination System  
OSM - Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior  
SCS - Soil Conservation Service  
SMCRA - Surface Mining Control and Reclamation Act of 1977, P.L. 95-87  
USDA - United States Department of Agriculture  
USDI - United States Department of the Interior  
U.S. EPA - United States Environmental Protection Agency  
USGS - United States Geological Survey

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation provides definitions of technical terms used in the surface coal mining and reclamation regulations. In that respect, this amendment affects approximately 1700 surface coal mining and reclamation operations and the general public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

- (a) Direct and indirect costs or savings:
  1. First year: None
  2. Continuing costs or savings: None
  3. Additional factors increasing or decreasing costs: None

- (b) Reporting and paperwork requirements: None
- (3) Assessment of anticipated effect on state

and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Tiering is not applicable to these amendments since these are definitions that must have the same meaning for all surface coal mining reclamation operations subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement  
(Proposed Amendment)**

**405 KAR 7:080. Small operator assistance.**

RELATES TO: KRS 350.465

PURSUANT TO: KRS Chapter 13A [13.082],  
350.020, 350.028, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This regulation sets out the federal small coal operator assistance program and establishes procedures to provide assistance to eligible operators who request assistance. The regulation specifies the assistance to be given to small operators whose total actual and attributed [annual] production does not exceed 100,000 tons during any consecutive twelve (12) month period.

Section 1. Scope. This regulation comprises the small operator assistance program (Program) and governs the procedures for providing assistance to eligible [qualified] small mine operators who request assistance for:

(1) The determination of the probable hydrologic consequences of mining and reclamation under Title 405, Chapter 8; and

(2) The statement of physical and chemical analyses of test borings or core samples under Title 405, Chapter 8; and

(3) Such other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 for which financial or other assistance may be available under this Program.

Section 2. Objective. The objective of this regulation is to meet the intent of KRS 350.465(2)(f) by:

(1) Providing financial and other necessary assistance to eligible [qualified] small operators; and

(2) Assuring that the cabinet shall have sufficient information to make a reasonable

assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the watershed(s) and particularly upon water availability.

Section 3. Authority. The secretary shall provide financial and other assistance under KRS 350.465(2)(f) to the extent that state funds are made available and to the extent that funds are appropriated by the United States Congress specifically for implementation of Section 507(c) of P.L. 95-87 and made available to the Commonwealth. Federal funds specifically authorize for this program to provide the services specified in Section 4 of this regulation shall not be used to cover administrative costs.

Section 4. Program Services. To the extent possible with available funds the cabinet shall, for eligible [qualified] small operators who request assistance:

(1) Select and pay a qualified laboratory to:

(a) Determine for the operator the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with Section 8 of this regulation; and

(b) Prepare a statement of the results of test borings or core samplings in accordance with Section 8 of this regulation.

(2) Collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

[(3) Authorized representatives of the cabinet shall conduct periodic on-site evaluations of the Program activities with the qualified small operator.]

Section 5. Eligibility for Assistance. An applicant is eligible for assistance if he or she:

(1) Intends to apply for a permit pursuant to KRS Chapter 350; [and]

(2) Establishes that the probable total actual and attributed production of the applicant from all locations during any consecutive twelve (12) month period either during the term of the permit or during the first five (5) years after issuance of the permit, whichever period is shorter, [for each year of the permit] will not exceed 100,000 tons. Production from the following operations shall be attributed to the applicant [permittee]:

(a) The pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a five (5) percent interest;

(b) The pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than five (5) percent of the applicant's operation;

(c) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and

(d) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business

relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under Title 405, Chapters 7 through 24; and

(4) Does not organize or reorganize his or her company solely for the purpose of obtaining assistance under this regulation.

[(a) All coal produced by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or in any other manner whatsoever, by the applicant.]

[(b) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the applicant owns more than a five (5) percent interest.]

[(c) All coal produced by persons who own more than five (5) percent of the applicant or who directly or indirectly control the applicant by reason of stock ownership, direction of the management or in any other manner whatsoever.]

[(d) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the applicant.]

[(3) "Beneficially owned or operated" and "beneficial ownership" means the owners or stockholders have full or limited control over the disposition of the coal resource.]

Section 6. Filing for Assistance. Each applicant shall submit the following information to the cabinet when filing for assistance: [at any time after initiation of the Small Operator Assistance Program within the Commonwealth of Kentucky:]

(1) A statement of the operator's intent to file a permit application; [and]

(2) The names[, and] addresses[, and] social security numbers of:

(a) The [potential] permit applicant; and

[(b) All owners and stockholders of the applicant and each person's percentage of ownership; and]

(b) [(c)] The [potential] operator if different from the applicant.

(3) The names, addresses, and percentages of ownership of all owners of and stockholders in the applicant;

(4) [(3)] A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 5(2) of this regulation. The schedule shall include for each location:

(a) The operator or company name under which coal is or will be mined;

(b) The permit number and MSHA number if currently or previously permitted;

[(c) The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant;]

(c) [(d)] The estimated coal production for each year of the proposed permit and that portion attributed to the applicant; and

[(e) MSHA identification number for the mine site;]

(d) [(f)] Mine location (county).[:]

(5) [(g)] The Kentucky coal severance tax vendor number and copies of payments for the past twelve (12) months made by the applicant and any affiliated companies as defined under Section 5(2) of this regulation; [and]

[(h) Kentucky map file number from the

Department of Mines and Minerals if available.]

(6) [(4)] A description of:

(a) The proposed method of [surface] coal mining [operation proposed];

(b) The anticipated starting and termination dates of mining operations;

(c) The total number of acres of land to be affected by the proposed mining and number of acres (surface or underground) from which coal is to be removed; [and]

(d) A general statement on the probable depth[, and] thickness of the coal resource, and the name(s) of the coal seam(s) to be mined[:]; and

(e) A statement identifying the coal resources in the permit area and the method by which they were calculated.

(7) [(5)] A USGS topographic map of 1:6,000 scale or larger or other topographic map of equivalent detail which clearly shows:

(a) The area of land to be affected [and the natural drainage above and below the affected area];

(b) The names of property owners within the area to be affected and of adjacent lands;

[(c) The location of existing structures and developed water sources within the area to be affected and on adjacent lands;]

[(d) The location of existing and proposed test borings or core samplings;]

(c) [(e)] The location and extent of known workings for the proposed [of any] underground mine; and

[(f) The location of coal beds to be mined.]

(8) [(6)] Copies of documents which show that:

(a) The applicant has a legal right to enter and commence mining within the permit area; and

(b) A legal right of entry has been obtained for the cabinet and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or to install necessary instruments.

Section 7. Application Approval and Notice.

(1) If the cabinet finds the applicant eligible and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

(a) Notify the applicant in writing that the application is approved;

(b) [(a)] Determine the minimum data requirements necessary to meet the provisions of Section 8 of this regulation; and

(c) [(b)] Select the services of one (1) or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved reports shall be provided to the applicant.

(2) If the cabinet finds [shall inform] the applicant ineligible, the applicant shall be informed in writing that the [in writing if the] application is denied and [shall state] the reasons for denial shall be stated.

(3) The granting of assistance under this regulation [part] shall not be a factor in decisions by the cabinet on a subsequent permit application.

Section 8. Data Requirements. (1) General. This section describes the minimum requirements for the collection of data to meet the objectives of this Program. The cabinet shall determine the data collection requirements for

each applicant or group of applicants. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the applicant.

(2) Specific provisions. Pursuant to Sections 1 through 4 of this regulation, data and information required to be contained in permit applications under the regulations listed in this subsection, may [shall] be supplied under this Program.

(a) Surface mines:

1. 405 KAR 8:030, Section 12; General requirements for geology and hydrology.

2. 405 KAR 8:030, Section 13; Geology information.

3. 405 KAR 8:030, Section 14; Ground water information.

4. 405 KAR 8:030, Section 15; Surface water information.

5. 405 KAR 8:030, Section 16; Alternative water supply information.

6. 405 KAR 8:030, Section 17; Climatological information.

7. 405 KAR 8:030, Section 32(1); Description of measures to protect the hydrologic balance.

8. [6.] 405 KAR 8:030, Section 32(3); Determination of probable hydrologic consequences of mining.

9. 405 KAR 8:030, Section 32(4); Plan for monitoring ground water and surface water.

(b) Underground mines:

1. 405 KAR 8:040, Section 12; General requirements for geology and hydrology.

2. 405 KAR 8:040, Section 13; Geology information.

3. 405 KAR 8:040, Section 14; Ground water information.

4. 405 KAR 8:040, Section 15; Surface water information.

5. 405 KAR 8:040, Section 16; Alternate water supply information.

6. 405 KAR 8:040, Section 17; Climatological information.

7. 405 KAR 8:040, Section 32(1); Description of measures to protect the hydrologic balance.

8. [6.] 405 KAR 8:040, Section 32(3); Determination of the probable hydrologic consequences of mining.

9. 405 KAR 8:040, Section 32(4); Plan for monitoring ground water and surface water.

(3) Data availability. Data collected under this Program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available.

Section 9. Allocation of Funds. If available funds are not sufficient to provide services under this regulation to all eligible applicants, the cabinet shall allocate the available funds among eligible applicants based upon a formula which shall include, but shall not be limited to, the following factors:

(1) Date of filing of application for assistance; and

[(2) Anticipated date of filing a permit application;]

(2) [(3)] Anticipated date for commencing mining operations; [; and]

[(4) Performance history.]

Section 10. Qualified Laboratories. (1) General:

(a) As used in this section, "qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination, statement, or other eligible services under this Program.

(b) The cabinet shall establish [and periodically publish] a list of qualified laboratories which may be used by the cabinet under the procedures of this section.

(c) Persons who desire to be included in the list of qualified laboratories established by the cabinet shall apply to the cabinet and provide such information as is necessary to establish the qualifications required by subsection (2) of this section.

(2) Basic qualifications:

(a) To be designated a qualified [qualify for designation the] laboratory, a firm shall demonstrate that it:

1. Is staffed with experienced, professional or technical personnel in the fields [of hydrology, mining engineering, aquatic biology, geology or chemistry] applicable to the work to be performed.

2. Is capable of collecting necessary field data and samples.

3. Has adequate space for material preparation[, ] and cleaning and sterilizing of necessary equipment[, ] and has stationary equipment, storage, and space to accommodate workloads during peak periods [periods of peak work loads].

4. Meets the requirements of the Occupational Safety and Health Act or the equivalent Commonwealth safety and health program.

5. Has the financial capability and business organization necessary to perform the work required.

6. Has analytical, monitoring, and measuring equipment capable of meeting the applicable standards and methods contained in: "Standard Methods for the Examination of Water and Waste Water," 14th Edition, 1975; "Methods for Chemical Analysis of Water and Wastes," 1974; and other references as specified by the cabinet.

7. Has the capability of making hydrologic field measurements and to conduct analytical laboratory determinations by acceptable hydrologic, geologic, [engineering] or analytical methods or by those appropriate methods or guidelines for data acquisition recommended by the cabinet.

(b) The qualified laboratory shall be capable of performing some or all of the services set forth in Section 8. Subcontractors may be used to provide the services required provided their use is defined in the application for qualification and they meet the requirements established by the cabinet [designation and approved by the cabinet].

Section 11. Applicant Liability. (1) The applicant shall reimburse the cabinet for the costs of the laboratory services performed pursuant to this regulation [if the applicant]:

(a) If the applicant submits false information;

(b) If the applicant fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory reports;

(c) If the applicant fails to mine after obtaining a permit; [or]



(d) If the cabinet finds that the applicant's actual and attributed [annual] production of coal for all locations exceeds 100,000 tons during any consecutive twelve (12) month period either during the term of the permit for which assistance is provided or during the first five (5) years after issuance of the permit, whichever is shorter; or

(e) If the permit rights or the permit application is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 100,000 ton annual production limit during any consecutive twelve (12) month period during the remaining term of the permit. Under this paragraph, the applicant and its successor are jointly and severally obligated to reimburse the cabinet [year of mining under the permit for which the assistance is provided].

(2) The cabinet may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment affects small coal operators that qualify for financial assistance under the Small Operators Assistance Program. It is expected that there will be 180 applicants per year. It also affects those consultants that provide services under this program.

(a) Direct and indirect costs or savings to those affected:

1. First year: This criteria for eligibility have been modified to ensure only those persons truly eligible under the Act receive assistance. As a result, there may be some operators that no longer are eligible. Also if a small operator obtains financial assistance for a permit then sells that permit to a large operator, then the amount of financial assistance shall be required to be reimbursed to the cabinet. Otherwise there are no additional significant costs or savings to those affected.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Minor changes have been made in the application requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None  
2. Continuing costs or savings: None  
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? Yes. Tiering is being applied in that this regulation provides for financial assistance for small coal operators.

A fiscal note is not required for this regulation because it will have no impact on local government.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Proposed Amendment)

#### 405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465

PURSUANT TO: KRS Chapter 13A [13.082], 350.020, 350.028, 350.060, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) This regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

(a) The permit applicant, including his or her telephone number;

(b) Every legal or equitable owner of record of the property to be mined;

(c) The holders of record of any leasehold interest in the property to be mined;

(d) Any purchaser of record, under a real estate contract, of the property to be mined;

(e) The operator, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State; and if a foreign corporation, a certified copy of the certificate of authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application and by any person identified in subsection (3)(c) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all sections.

(7) Each application shall contain proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the

applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each application shall contain a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (P.L. 95-87) or KRS Chapter 350 and regulations promulgated thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section

regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under Title 405, Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

- (1) Type of permit or license;

- (2) Name and address of issuing authority;

- (3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

- (4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological features within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historical, and cultural preservation agencies.

Section 12. General Requirements for Premining Geologic and Hydrologic Information [Geology and Hydrology]. (1) The application shall contain premining geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on

the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by KAR Title 405 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and ground water monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the premining data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that such data extrapolation techniques are valid and that information obtained through such techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 146 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

[(1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 16 of this regulation.]

[(2) (a) Information on hydrology including water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the cabinet, to the extent that this data is available from an appropriate federal or state agency.]

[(b) If this information is not available from such agencies, the applicant may gather and submit this information to the cabinet as part of the permit application.]

[(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information

may be required for each site as when models are not used.]

Section 13. Premining Geologic [Geology] Information. (1) The application shall contain premining geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and such aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including such aquifers.

3. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet will not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information

required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of such aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to such aquifers.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

[(1) The geology description shall include a general statement of the geology within the proposed permit area and adjacent areas down to and including the first aquifer which may be affected below the lowest coal seam to be mined.]

[(2) (a) Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined, to provide the following data in the description:]

[1. Location of subsurface water, if encountered;]

[2. Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;]

[3. Physical properties of each stratum within the overburden;]

[4. Chemical analyses of each stratum within the overburden down to and including the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity producing materials; and]

[5. Analyses of the coal seam, including, but not limited to, an analysis of the total sulfur and pyritic sulfur content.]

[(b) If required by the cabinet, geologic information shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.]

[(c) An applicant may request that the

requirement for a statement of the results of test borings or core samplings required under paragraph (a) of this subsection be waived by the cabinet. The waiver may be granted only if the cabinet makes a written determination that the statement is unnecessary because other equivalent information is accessible to the cabinet in a satisfactory form.]

Section 14. Premining Ground Water Information. (1) The application shall contain premining ground water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Ground water information shall include an inventory of wells, springs, underground mines, or other similar ground water supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other ground water supply facilities.

(3) Ground water information shall include seasonal ground water quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate ground water monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal ground water quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Ground water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(4) The ground water information described in subsection (3) of this section will be required in whole or in part for coal seams in those cases where coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) Monitoring wells constructed by the applicant shall be constructed according to the May, 1985 edition of the department's manual entitled "Monitoring Well Construction Specifications" which is incorporated herein by reference (copies of which may be obtained from the department). Wells which are currently being used for domestic or other purposes may be used for the collection of seasonal ground water quantity and quality data provided that:

(a) The wells are located such that they meet the requirements of subsection (3) of this section; and

(b) The wells can reasonably be expected to provide monitoring data equivalent to wells meeting the "Monitoring Well Construction Specifications."

(6) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or

to conduct the cumulative impact assessment, the cabinet may require ground water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

[(1) The application shall contain a description of the ground water hydrology for the proposed permit area and adjacent area, including, at a minimum:]

[(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;]

[(b) The lithology and thickness of the aquifers;]

[(c) Known uses of the water in the aquifers and water table; and]

[(d) The quality of ground water, if encountered.]

[(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the cabinet.]

Section 15. Premining Surface Water Information. (1) The application shall contain premining surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

[(1) Surface water information shall be described, including the name of the stream or watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds, and springs, the location of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify the seasonal variations in water quantity and quality within the proposed permit area and adjacent areas.]

(3) [(2)] Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive runoff from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from such facilities.

(4) Surface water information shall include seasonal quantity and quality data collected

from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

[(a) Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations; and]

[(b) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas sufficient to identify seasonal variations. These data shall include, but not be limited to, the parameters listed in this paragraph. The cabinet may add parameters as appropriate to ensure collection of information which the cabinet determines is relevant.]

[1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;]

[2. Total suspended solids in milligrams per liter;]

[3. Acidity;]

[4. Alkalinity;]

[5. pH in standard units;]

[6. Total iron in milligrams per liter;]

[7. Total manganese in milligrams per liter; and]

[8. Sulfate in milligrams per liter.]

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other beneficial [legitimate] use.

(2) If contamination, diminution, or interruption of a surface or ground water source may result, then the application [description] shall identify and describe the adequacy of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses [to replace the existing sources].

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b).

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S.

SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(a) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey for lands within the proposed permit area contains soil map units which have not been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.



Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(1) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to

be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal waste, and non-coal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of Title 405, Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

[(2) The blasting plan shall also include:]

[(a) Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;]

[(b) Description of procedures and plans for recording and retention of information of the following during blasting:]

[1. Drilling patterns, including size, number, depths, and spacing of holes;]

[2. Charge and stemming of holes;]

[3. Types of detonators and detonation controls; and]

[4. Sequence and timing of firing holes.]

[(c) Description of blasting warning and site access control equipment and procedures;]

[(d) Description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to

be used in lieu of the formula provided in 405 KAR 16:120;]

[(e) Description of plans for recording and reporting to the cabinet the results of preblasting surveys, if required; and]

[(f) Description of unavoidable hazardous conditions for which deviations from the blasting schedule may be needed under 405 KAR 16:120, Section 4(2).]

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(9), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities.

(1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to

obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the premining geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary in order to enable the operation to meet such requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4 and 5;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR

16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 6; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the premining geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For ground water systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination

of the probable hydrologic consequences shall be required.

(4) (a) The application shall include a plan for the collection, recording, and reporting of ground water and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic premining information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

[(1) Each plan shall contain a description, with appropriate maps and cross-section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with Title 405, Chapter 16, to ensure the protection of:]

[(a) The quality of surface and groundwater systems, both within the proposed permit area and adjacent areas, from the adverse effects of the proposed surface mining activities;]

[(b) The rights of present users of surface and groundwater; and]

[(c) The quantity of surface and groundwater both within the proposed permit area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with Section 16 of this regulation and 405 KAR 16:060, Section 8, where the protection of quantity cannot be ensured.]

[(2) The description shall include:]

[(a) A plan for the control, in accordance with Title 405, Chapter 16, of surface and groundwater drainage into, through and out of the proposed permit area;]

[(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, of surface and groundwater drainage from the area to be disturbed by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 16:070, according to the more stringent of the following:]

[1. Title 405, Chapters 16 through 20; or]

[2. Other applicable state and federal laws.]

[(c) A plan for the restoration of the approximate recharge capacity of the permit area in accordance with 405 KAR 16:060, Section 6.]

[(d) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 16:110.]

[(3) The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and groundwater systems under all seasonal conditions, including concentrations of dissolved solids, suspended solids, total iron, pH, acidity, alkalinity, total manganese, and other parameters required by the cabinet.]

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments.

(1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3);

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.

(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the pre-mining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 16:210;

(c) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans

and applicable state and local land use plans and programs; and

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a public roads transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the surface coal mining operation.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

CHARLOTTE E. BALDWIN, Secretary  
APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: This regulation sets forth requirements for information which must be included in all applications for permits to conduct surface coal mining operations under KAR Title 405, Chapters

7-24, and thus affects all persons who submit applications for such permits. This regulation also affects, directly or indirectly, the general public which lives in, or owns property in, the coal regions of Kentucky.

More particularly, the proposed amendments to this regulation will affect all applicants for permits, amendments to permits, and major revisions to permits, (estimated at approximately 1000 such applications per year) which are processed after the effective date of these amendments. Also, as required by the terms of a legal settlement agreement in Federal District Court, parts of these amendments (those parts relating to geology and hydrology) will affect approximately one-half of the some 1700 permits which have been issued under the permanent regulatory program.

(a) Direct and indirect costs or savings to those affected:

1. First year: Among the proposed amendments, only certain of the hydrology requirements are expected to impose significant additional costs on applicants, and these applicants will be affected to considerably different extents. Most applicants who previously would have been able to obtain variances from premining ground water monitoring requirements (approximately one-half of all permanent program permits issued thus far have obtained such variances) will not be able to obtain such variances under the proposed amendments, and thus will incur premining monitoring costs similar to the costs now routinely incurred by those operations which did not obtain such variances. Also, under the terms of the settlement agreement, during the first year many of the existing permittees who obtained such variances will be required to begin conducting ground water monitoring and to comply with certain other of the hydrology requirements in the proposed amendments.

Further, other provisions in the proposed amendments will require that certain hydrologic investigations already required of all applicants by this regulation, be prepared in greater detail by all applicants. Although precise estimates of the increased costs due to more detailed hydrologic investigations are not available, the value of assistance provided to qualified small operators under the cabinet's Small Operator Assistance Program for relatively detailed hydrologic investigations now averages about \$8000 per operation.

2. Continuing costs or savings: Costs for detailed hydrologic investigations are incurred with each application for a permit or amendment to a permit. Additional costs for supplemental hydrologic investigations will, in some cases, be incurred with applications for major revisions to permits.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed amendments will not have a significant impact on routine reporting requirements for permittees as a class, but will impose ground water data reporting requirements on some operations for which such data reporting would not have been necessary prior to these amendments. Also, these amendments will significantly increase the amount of technical hydrologic documentation which must be submitted in applications for permits and amendments to permits, and some major revisions to permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will incur some additional cost associated with the additional time required for technical review of more detailed hydrologic portions of permit applications. The cabinet will also incur additional cost associated with the acceleration of mid-term reviews of approximately one-half of the 1700 permanent program permits which have been issued, as required by the legal settlement agreement.

2. Continuing costs or savings: In subsequent years the cabinet will continue to incur the cost associated with the additional time required for technical review of more detailed hydrologic portions of permit applications.

3. Additional factors increasing or decreasing costs: The cabinet will incur minor additional cost in computerizing increased amounts of premining ground water data, in order to make the information available to other applicants and to government agencies.

(b) Reporting and paperwork requirements: None other than routinely associated with (2)(a) above.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: These proposed amendments fulfill the requirements of a legal settlement agreement in Federal Court, and at the same time incorporate changes made necessary by changes in the corresponding federal surface mining regulations.

Tiering:

Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapters 7-24. However, financial assistance is available under 405 KAR 7:080 to qualified small operators to help meet the cost of the detailed hydrologic requirements.

A fiscal note is not required for this regulation because it will have no impact on local government.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement  
(Proposed Amendment)**

**405 KAR 8:040. Underground coal mining permits.**

RELATES TO: KRS 350.060, 350.151  
PURSUANT TO: KRS Chapter 13A [13.082],  
350.020, 350.028, 350.060, 350.151, 350.465



NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability.

(a) This regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this regulation.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

(a) The permit applicant, including his or her telephone number;

(b) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(c) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined;

(d) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined;

(e) The operator, if different from the applicant, who will conduct underground coal mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. For businesses other

than single proprietorships, the application shall contain the following information where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State, and if a foreign corporation, a certified copy of the Certificate of Authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application, and by any person identified in subsection (3)(c) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all sections.

(7) Each application shall contain proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each application shall contain: a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or

similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated pursuant thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

#### Section 4. Right of Entry and Right to Mine.

(1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area, a copy of the document of conveyance that grants or reserves

the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under Title 405, Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying such underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the

complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing, premining environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historic, and cultural preservation agencies.

Section 12. General Requirements for Premining Geologic and Hydrologic Information [Geology and Hydrology]. (1) The application shall contain premining geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by KAR Title 405 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and ground water monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the premining data collected under Sections 14(1) and 15(1) of

this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet;

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that such data extrapolation techniques are valid and that information obtained through such techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 146 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

[(1) Each application shall contain a description of the geology and hydrology of lands within the proposed permit area, adjacent area, and general area. The description shall include information on the characteristics of surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 12 through 16 of this regulation.]

[(2) (a) Information on hydrology including water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the cabinet, to the extent that this data is available from an appropriate federal or state agency.]

[(b) If this information is not available from such agencies, the applicant may gather and submit this information to the cabinet as part of the permit application.]

[(3) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.]

Section 13. Premining Geologic [Geology] Information. (1) The application shall contain premining geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been

collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may fracture, incur subsidence, or otherwise be disturbed by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and such aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed, and chemical analysis of each stratum which may be fractured or otherwise disturbed by the mining operation for those areas overlying underground workings where overburden will not be removed, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet will not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may fracture, incur subsidence, or otherwise be disturbed by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may fracture, or otherwise be disturbed by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of such aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and such aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

[(1) The geology description shall include a general statement of the geology within the proposed permit area and adjacent areas, down to and including the first aquifer to be affected below the lowest coal seam to be mined. The geology for areas proposed to be affected by surface operations and facilities, those surface lands overlying coal to be mined, and the coal to be mined shall be separately described, as follows:]

[(a) Areas affected by surface operations or

facilities. Geology of all strata to be affected by surface operations or facilities shall be described; and where any coal seam is to be extracted by surface operations, geology of all strata down to and including the stratum immediately below the coal seam shall be described, including the following data resulting from analyses of test borings, core samplings, or outcrop samples:]

[1. The location of areas where subsurface water will be exposed at the face-up area;]

[2. The logs of drill holes showing the lithologic characteristics of the strata to be affected;]

[3. The physical properties of each stratum within the overburden; and]

[4. Chemical analyses of each stratum to be affected, including the stratum immediately below the lowest coal seam to be mined, to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity-producing materials.]

[(b) Areas underlain by coal seams to be mined. The geology for all surface lands within the proposed permit area which are underlain by the coal seam to be extracted and the geology of the coal seam itself shall be described, including:]

[1. Location of subsurface water, if encountered;]

[2. The depth, classification, and geologic structure of the overburden;]

[3. Pyritic content and potential acidity or alkalinity of the stratum immediately above and below the coal seam to be mined and the clay content of the stratum immediately below the coal seam to be mined; and]

[4. Total sulfur and pyritic sulfur content of the coal seam.]

[(2) An applicant may request that the requirements of subsection (1)(a) of this section be waived by the cabinet. The waiver may be granted only if the cabinet makes a written determination that the information is unnecessary because other equivalent information is accessible to the cabinet in a satisfactory form.]

Section 14. Premining Ground Water Information. (1) The application shall contain premining ground water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Ground water information shall include an inventory of wells, springs, underground mines, or other similar ground water supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other ground water supply facilities.

(3) Ground water information shall include seasonal ground water quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate ground water monitoring facilities, at a sufficient number of monitoring locations with adequate

areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal ground water quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Ground water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(4) The ground water information described in subsection (3) of this section will be required in whole or in part for coal seams in those cases where coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) Monitoring wells constructed by the applicant shall be constructed according to the May, 1985 edition of the department's manual entitled "Monitoring Well Construction Specifications." Wells which are currently being used for domestic or other purposes may be used for the collection of seasonal ground water quantity and quality data provided that:

(a) The wells are located such that they meet the requirements of subsection (3) of this section; and

(b) The wells can reasonably be expected to provide monitoring data equivalent to wells meeting the "Monitoring Well Construction Specifications."

(6) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require ground water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

[(1) The application shall contain a description of the ground water hydrology for the proposed permit and adjacent area, including, at a minimum:]

[(a) The depth below the surface and the probable horizontal extent of the water table and aquifers;]

[(b) The lithology and thickness of the aquifers;]

[(c) The uses of the water in the aquifers and water table; and]

[(d) The quality of ground water, if encountered.]

[(2) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the cabinet.]

Section 15. Premining Surface Water Information. (1) The application shall contain premining surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and

adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

[(1) Surface water information shall be described, including the name of the stream or watershed which will receive water discharges, the locations of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within areas affected by surface operations and facilities and adjacent areas. The description shall also include the location of all surface water bodies such as streams, lakes, ponds, and springs, within the proposed permit area and adjacent area.]

(3) [(2)] Surface water information [for areas affected by surface operations and facilities and adjacent areas] shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive runoff from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from such facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

[(a) Minimum, maximum, and average discharge conditions, which identify critical low flows and peak discharge rates of streams sufficient to identify seasonal variations; and]

[(b) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows of surface or ground water from the affected area sufficient to identify seasonal variations. These data shall include, but not be limited to, the parameters listed in this paragraph. The cabinet may add parameters as appropriate to

ensure collection of information which the cabinet determines is relevant.]

[1. Total dissolved solids in milligrams per liter or specific conductance in micromhos per centimeter;]

[2. Total suspended solids in milligrams per liter;]

[3. Acidity;]

[4. Alkalinity;]

[5. pH in standards units;]

[6. Total iron in milligrams per liter;]

[7. Total manganese in milligrams per liter; and]

[8. Sulfate in milligrams per liter.]

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area for domestic, agricultural, industrial, or other legitimate use.

(2) If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal

regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a pre-application investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no such soil survey has been made for these lands, the applicant shall cause such a survey to be made.

(a) When a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey as required by this section contains soil map units which have not been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use

description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or



contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for such data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the

cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28, 31, 32, 33, 34, 38 of this regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this regulation, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and non-coal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease

control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of Title 405, Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the

environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands.

(2) If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the cabinet agrees with such conclusion, no further information need be provided in the application under this section.

(3) In the event the survey shows such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and
2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;
2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including such measures as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface including such measures as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of non-cancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as:

1. The results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil [generated at surface areas affected by surface operations and facilities,] according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description

of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the premining geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) the description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary in order to enable the operation to meet such requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by

405 KAR 18:060, Section 4;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2; and

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 5, and 7, and 405 KAR 18:080.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the premining geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For ground water systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination

of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of ground water and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic premining information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

[(1) Each plan shall contain a description, with appropriate maps and drawings, of the measures to be taken during and after the proposed underground mining activities, in accordance with Title 405, Chapter 18, to ensure the protection of:]

[(a) The quality of surface and ground water, both within the proposed permit area and adjacent areas, from adverse effects of the proposed underground mining activities;]

[(b) The rights of present users to surface and ground water;]

[(c) The quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities;]

[(d) Water quality by locating openings for mines in accordance with 405 KAR 18:060, Section 5.]

[(2) The description shall include:]

[(a) A plan for the control, in accordance with Title 405, Chapter 18, of surface and ground water drainage into, through, and out of the proposed permit area;]

[(b) A plan for the treatment, where required under Title 405, Chapters 16 through 20, and surface and ground water drainage from the area to be affected by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 405 KAR 18:070, according to the more stringent of the following:]

1. Title 405, Chapters 16 through 20; or]

2. Other applicable state and federal laws.]

[(c) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 405 KAR 18:110.]

[(3) The description shall include a determination of the probable hydrologic consequences of the proposed underground mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved solids, suspended solids, total iron, pH, total manganese, acidity, alkalinity and other parameters required by the cabinet.]

[(4) Each plan shall contain a description, with appropriate drawings, of permanent entry seals and downslope barriers designed to ensure stability under anticipated hydraulic heads

developed while promoting mine inundation after mine closure for the proposed permit area.]

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments.

(1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded

material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsection (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the premining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 18:220;

(c) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining activities.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

Section 39. Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: This regulation sets forth requirements for information which must be included in all applications for permits to conduct surface coal mining operations under KAR Title 405, Chapters 7-24 and thus affects all persons who submit applications for such permits. This regulation also affects, directly or indirectly, the general public which lives in, or owns property in, the coal regions of Kentucky.

More particularly, the proposed amendments to this regulation will affect all applicants for permits, amendments to permits, and major revisions to permits, (estimated at approximately 1000 such applications per year) which are processed after the effective date of these amendments. Also, as required by the terms of a legal settlement agreement in Federal District Court, parts of these amendments (those parts relating to geology and hydrology) will affect approximately one-half of the some 1700 permits which have been issued under the permanent regulatory program.

(a) Direct and indirect costs or savings to those affected:

1. First year: Among the proposed amendments, only certain of the hydrology requirements are expected to impose significant additional costs on applicants, and these applicants will be affected to considerably different extents. Most applicants who previously would have been able to obtain variances from premining ground water monitoring requirements (approximately one-half of all permanent program permits issued thus far have obtained such variances) will not be able to obtain such variances under the proposed amendments, and thus will incur premining monitoring costs similar to the costs now routinely incurred by those operations which did not obtain such variances. Also, under the terms of the settlement agreement, during the first year many of the existing permittees who obtained such variances will be required to begin conducting ground water monitoring and to comply with certain other of the hydrology requirements in the proposed amendments.

Further, other provisions in the proposed amendments will require that certain hydrologic

investigations already required of all applicants by this regulation, be prepared in greater detail by all applicants. Although precise estimates of the increased costs due to more detailed hydrologic investigations are not available, the value of assistance provided to qualified small operators under the cabinet's Small Operator Assistance Program for relatively detailed hydrologic investigations now averages about \$8000 per operation.

2. Continuing costs or savings: Costs for detailed hydrologic investigations are incurred with each application for a permit or amendment to a permit. Additional costs for supplemental hydrologic investigations will, in some cases, be incurred with applications for major revisions to permits.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed amendments will not have a significant impact on routine reporting requirements for permittees as a class, but will impose ground water data reporting requirements on some operations for which such data reporting would not have been necessary prior to these amendments. Also, these amendments will significantly increase the amount of technical hydrologic documentation which must be submitted in applications for permits and amendments to permits, and some major revisions to permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will incur some additional cost associated with the additional time required for technical review of more detailed hydrologic portions of permit applications. The cabinet will also incur additional cost associated with the acceleration of mid-term reviews of approximately one-half of the 1700 permanent program permits which have been issued, as required by the legal settlement agreement.

2. Continuing costs or savings: In subsequent years the cabinet will continue to incur the cost associated with the additional time required for technical review of more detailed hydrologic portions of permit applications.

3. Additional factors increasing or decreasing costs: The cabinet will incur minor additional cost in computerizing increased amounts of premining ground water data, in order to make the information available to other applicants and to government agencies.

(b) Reporting and paperwork requirements: None other than routinely associated with (2)(a) above.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: These proposed amendments fulfill the requirements of a legal settlement agreement in Federal Court, and at the same time incorporate



changes made necessary by changes in the corresponding federal surface mining regulations.

#### Tiering:

Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapter 7-24. However, financial assistance is available under 405 KAR 7:080 to qualified small operators to help meet the cost of the detailed hydrologic requirements.

A fiscal note is not required for this regulation because it will have no impact on local government.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Proposed Amendment)

#### 405 KAR 12:010. General provisions for inspection and enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990

PURSUANT TO: KRS Chapter 13A [13.082], 350.020, 350.028, 350.050, 350.130, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to rigidly enforce regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This regulation generally sets forth a rigid enforcement and inspection policy for the cabinet. This regulation directs that inspections be made at irregular intervals and without need of a warrant or prior notice to the operator. This regulation requires certain frequencies for inspections and complete preservation of the evidence, records and observations made during inspections. This regulation also sets forth the general policy of public participation in the enforcement process and references the civil and criminal penalties of KRS Chapter 350.

Section 1. Applicability. The provisions of this chapter shall apply to all surface coal mining and reclamation operations and coal exploration and reclamation operations.

Section 2. Inspection and Enforcement. In accordance with the provisions of this chapter, the cabinet shall conduct or cause to be conducted such inspections, studies, investigations, or other determinations as it deems reasonable and necessary to obtain information and evidence with which to ensure that surface coal mining and reclamation operations and coal exploration and reclamation operations are conducted in accordance with the provisions of KRS Chapter 350; Title 405, Chapters 7 through 24; and all terms and conditions of the applicable permit or approval.

Section 3. Timing and Conduct of Inspections.  
(1) Right of entry and access. Authorized representatives of the cabinet shall:

(a) Have unrestricted right of entry and

access to areas affected by coal exploration and reclamation operations and areas affected by surface coal mining and reclamation operations for any purpose associated with their proper duties pursuant to KRS Chapter 350 or KAR Title 405 including but not limited to activities associated with the conductance of inspections; and

(b) At reasonable times and without delay, have unrestricted access to and authority to copy any records required to be kept under KRS Chapter 350 and KAR Title 405 and have unrestricted access to, for the purpose of inspecting, any monitoring equipment required under or pursuant to KRS Chapter 350 or KAR Title 405. [have unrestricted right of entry and access to all parts of the permit area for any purpose associated with their proper duties pursuant to KRS Chapter 350 and this Title, including but not limited to the purpose of making inspections.]

(2) Presentation of credentials. Authorized representatives of the cabinet shall present credentials for identification purposes upon request by a representative of the permittee or the person conducting the coal exploration and reclamation operations on the affected area [on the permit area].

(3) Prior notice. The cabinet shall have no obligation to give prior notice that an inspection will be conducted.

(4) Timing. Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays but may be conducted at night or on weekends or holidays when the cabinet deems such inspections necessary to properly monitor compliance with KRS Chapter 350; Title 405, Chapters 7 through 24; and terms and conditions of the applicable permit or approval.

(5) Frequency of inspections.

(a) Partial inspections of surface coal mining and reclamation operations. A partial inspection of surface coal mining and reclamation operations is an on-site or aerial review of a permittee's compliance with some of the permit terms and conditions and some of the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24. The cabinet shall conduct an average of at least one (1) partial inspection per month of each area affected by surface coal mining and reclamation operations permitted under Title 405, Chapter 8 at least until phase I reclamation, as defined in 405 KAR 10:040, has been completed on the entire permit area. The cabinet shall continue such partial inspections until the cabinet determines that the permit area is sufficiently stable with respect to mass stability, erosion, revegetation, water quality and other reclamation requirements so that the quarterly complete inspections required under paragraph (b) of this subsection will provide adequate inspection of the permit area.

(b) Complete inspections of surface coal mining and reclamation operations. A complete inspection of surface coal mining and reclamation operations is an on-site review of a permittee's compliance with all of the permit terms and conditions and all of the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 within the entire area disturbed or affected by surface coal mining and reclamation operations. The cabinet shall conduct an average

of at least one (1) complete inspection per calendar quarter of each area affected by surface coal mining and reclamation operations permitted under Title 405, Chapter 8.

(c) The cabinet shall conduct [periodic] inspections of [all] coal exploration and reclamation operations as necessary to ensure compliance with KRS Chapter 350 and Title 405, Chapters 7 through 24.

(6) Aerial inspections.

(a) Aerial inspections shall be conducted in a manner that reasonably insures the identification and documentation of conditions at each surface coal mining and reclamation site and each coal exploration and reclamation site inspected.

(b) Any potential violation observed during an aerial inspection shall be investigated on site within three (3) days provided that any indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under 405 KAR 12:020, Section 3(1)(b) and (c) shall be investigated on site immediately and provided further that an aerial inspection which necessitates an on-site inspection of a potential violation shall not be considered to be an additional partial inspection for the purposes of subsection (5) of the section.

Section 4. Records of Inspections. (1) Authorized representatives of the cabinet shall make and maintain written records of inspections and other activities including observations made and factual matters discovered. A copy of such records shall be made available to the permittee or the person conducting the coal exploration and reclamation operations and shall be available for public inspection at the appropriate regional office of the department in accordance with the Kentucky Open Record Laws, KRS 61.870 through KRS 61.884, until at least five (5) years after final bond release on the entire permit area or until at least five (5) years after bond forfeiture. For unpermitted areas, the cabinet shall maintain such records until at least five (5) years after the final action of the cabinet regarding the operations.

(2)(a) For permitted areas for which final bond release has been granted pursuant to Title 405, Chapter 10; for areas for which bond has been forfeited pursuant to Title 405, Chapter 10; and for unpermitted areas for which the cabinet has taken final action, the cabinet may, at its own option and expense and as an alternative to maintaining the information for public inspection at the location identified in accordance with subsection (1) of this section, retain information at a location other than the department's appropriate regional office and, at the request of any person:

1. Provide copies of the information promptly by mail to such person; or
2. Transfer the information to the department's appropriate regional office for public inspection.

(b) For situations in which the cabinet provides information in accordance with this subsection, the cabinet shall maintain, for public inspection at the department's appropriate regional office, a description of the information available for mailing or submission to the appropriate regional office and the procedures to be used for obtaining such

information.

(3) [(2)] Upon inspection of coal exploration and reclamation operations and surface coal mining and reclamation operations, authorized representatives of the cabinet shall collect evidence of every observed violation of a permit term or condition, every observed violation of a term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval), and every observed violation of a [or] requirement of KRS Chapter 350 or a regulation[s] promulgated pursuant thereto.

(4) [(3)] The cabinet shall preserve [collected] evidence collected pursuant to subsection (3) of this section where appropriate in order that such evidence may be presented at hearings held pursuant to 405 KAR 7:090.

Section 5. Penalties and Sanctions. Any person who violates any provision of KRS Chapter 350; [or] any provision of Title 405, Chapters 7 through 24; [or] any permit term or condition; or any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval) and any person [or] who fails to perform the duties imposed by such provisions or who fails to comply with a determination or order of the cabinet pursuant to such provisions shall be subject to civil and criminal penalties as set forth in KRS 350.465(3)(h), KRS 350.990, 405 KAR 7:090, and [or] any other applicable provision of law and shall be subject to applicable sanctions as set forth in KRS 350.130 or any other applicable provision of law. Violations by any person conducting surface coal mining and reclamation operations [or exploration operations] on behalf of a [the] permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage. Violations by any person conducting coal exploration and reclamation operations shall be attributed to the person conducting the coal exploration and reclamation operations or the person identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020, unless such person establishes that they were acts of deliberate sabotage.

Section 6. Public Participation. Any person shall have the opportunity to request an inspection and to participate in enforcement actions of the cabinet as provided in 405 KAR 12:030.

Section 7. Formal Review. Any person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order may request review of that action pursuant to 405 KAR 7:090. The filing of a request for a hearing shall not operate as a stay of any notice or order or any modification, termination, or vacation thereof.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and

testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment affects approximately 1,700 surface coal mining operations and the general public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional costs will be incurred by the requirement to maintain records for five years after bond release.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. These enforcement procedures must apply equally to each coal mining operation subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement  
(Proposed Amendment)**

**405 KAR 12:020. Enforcement.**

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990

PURSUANT TO: KRS Chapter 13A [13.082], 350.020, 350.028, 350.050, 350.130, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part directs the cabinet to rigidly

enforce regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This regulation sets forth various kinds of notices and orders to be issued by authorized representatives of the cabinet. The regulation directs that there be issued a notice of noncompliance and order for remedial measures. The regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of imminent harm. The regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate such orders or notices. The regulation sets forth procedures for suspension or revocation of a permit and for a determination of whether a pattern of violations exists.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the regulations contained in Title 405, Chapters 7 through 24.

(2) Unless otherwise provided to the contrary in Title 405, Chapters 7 through 24 or unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the Commissioner of the Department of Surface Mining Reclamation and Enforcement are deemed the authorized representatives of the cabinet [secretary] for the purposes of Sections 2, 3, and 4 of this regulation.

Section 2. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized representative of the cabinet [secretary] shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he or she finds a violation of KRS Chapter 350; Title 405, Chapters 7 through 24; any term or condition of a permit; any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or any other applicable requirement.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps if appropriate; and

(d) A reasonable description of the portions of the surface coal mining and reclamation operations or coal exploration and reclamation operations to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 5 of this regulation.

(4) Extension. An authorized representative of the cabinet [secretary] may, by written notice, extend the time set for remedial action or for accomplishment of an interim step, if the

failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the permittee or the person conducting the coal exploration and reclamation operations that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances set forth in paragraph (b) of this subsection. An abatement period exceeding [date beyond] ninety (90) days pursuant to this subsection shall not be granted for situations in which [when] the permittee's failure or the failure of the person conducting the coal exploration and reclamation operations to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee or the person conducting the coal exploration and reclamation operations in completing the remedial action required.

(b) Circumstances which may qualify [a] surface coal mining and reclamation operations or coal exploration and reclamation operations for an abatement period of more than ninety (90) days are situations in which:

1. [Where] The permittee of the [an] ongoing [permitted] surface coal mining and reclamation operations or the person conducting the coal exploration and reclamation operations has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but such permit or approval, for reasons not within the control of the permittee or the person conducting the coal exploration and reclamation operations, has not been and [or] will not be issued prior to [within] ninety (90) days after the [a] valid permit or approval expires or is required[, for reasons not within the control of the permittee];

2. [Where] There is a valid judicial order precluding abatement within ninety (90) days [as] to which the permittee or the person conducting the coal exploration and reclamation operations has diligently pursued all rights of appeal and [as] to which he or she has no other effective legal remedy;

3. [Where] The permittee or the person conducting the coal exploration and reclamation operations cannot abate within ninety (90) days due to a labor strike; and

4. [Where] Weather conditions preclude abatement within ninety (90) days; [, or where,] due to weather conditions abatement within ninety (90) days would clearly [would] cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(c) Whenever an abatement period [time] in excess of ninety (90) days is approved by the cabinet [permitted], interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and [or] the environment.

(d) If any of the conditions in paragraph (b) of this subsection exist, the permittee or the person conducting the coal exploration and reclamation operations may request the authorized representative of the cabinet to

grant an abatement period exceeding ninety (90) days. The authorized representative of the cabinet shall not grant such an abatement period without the approval [concurrence] of the Director of the Division of Field Services [Operations and Enforcement] or his or her designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee or the person conducting the coal exploration and reclamation operations shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider any relevant written or oral information from the permittee, the person conducting the coal exploration and reclamation operations, and [or] any other sources. The authorized representative of the cabinet shall promptly and full document in the applicable file his or her recommendation [reasons] for granting or denying the request and the reasons therefor. The authorized representative's immediate supervisor shall review this document before approving [concurring in] or disapproving the extended abatement period [date] and shall promptly and fully document the reasons for his or her approval [concurrence] or disapproval in the applicable file.

(e) Any determination made under paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 7:090.

(f) No extension granted under this subsection may exceed ninety (90) days in length. In situations in which [Where] the condition or circumstance that [which] prevented abatement within ninety (90) days exists at the expiration of the [any such] extension, the permittee or the person conducting the coal exploration and reclamation operations may request a further extension in accordance with the procedures of this subsection.

(5) Modification. An authorized representative of the cabinet [secretary] may, by written notice, modify an order for remedial measures for good cause.

(6) Termination. An authorized representative of the cabinet [secretary] shall, by issuance of a notice of inspection of noncompliance, provide written notice to the person to whom a notice of noncompliance and order for remedial measures has been [was] issued that such notice is terminated when the authorized representative of the cabinet determines that all [a] violations listed therein have [has] been corrected. Such termination shall not affect the right of the cabinet to assess civil penalties for those violations pursuant to 405 KAR 7:090 or to impose any other applicable sanctions as authorized by law.

(7) Vacation. Based upon the written recommendation of the regional administrator and the authorized representative of the cabinet [secretary] who issued the notice of noncompliance and order for remedial measures, the Director of the Division of Field Services [Operations and Enforcement] may vacate a notice of noncompliance and order for remedial measures determined to have been issued in error.

Section 3. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the [a] person to whom [issued] a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of such notice within the time for remedial action established therein or as subsequently extended, an authorized representative of the cabinet [secretary] shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet [secretary] shall immediately issue an order for cessation and immediate compliance if he or she finds, on the basis of an inspection, any condition or practice; [or] any violation of KRS Chapter 350; any violation of Title 405, Chapters 7 through 24; or any violation of a term or condition of the applicable [a] permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for a cessation and immediate compliance if he or she finds, on the basis of an inspection, that surface coal mining and reclamation operations are being conducted by a person without a valid surface coal mining and reclamation operations permit for the activities or that coal exploration and reclamation operations are being conducted without proper notice of intention to explore or approval for such operations, as applicable, in accordance with 405 KAR 8:020.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the operations in which it applies;

3. The remedial measures, if any, necessary, [if any,] to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with [meeting] any interim steps.

(b) At the same time that the authorized representative of the cabinet [secretary] issues an order for cessation and immediate compliance pursuant to [under] subsection (1)(b) or (c) of this section, he or she shall also issue a notice of noncompliance and order for remedial measures.

(3) Service. Service of an order for cessation and immediate compliance shall be in the manner set forth in Section 5 of this regulation.

(4) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of all surface coal mining and reclamation operations, all coal exploration and reclamation operations, or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the cabinet [secretary] deems necessary to abate the condition, practice, or violation in the most

expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; [or] until the order is vacated, modified, or terminated in writing pursuant to subsection (5) of this section; [by an authorized representative of the secretary; or] until it is vacated, modified, or terminated by a hearing officer pursuant to 405 KAR 7:090; or until the order expires pursuant to Section 6 of this regulation.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(5) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet [secretary] may, by written notice, modify or terminate an order for cessation and immediate compliance issued pursuant to this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his or her authorized representative shall terminate an [the] order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he or she determines that all conditions, practices, and [or] violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations under 405 KAR 7:090 or to impose any other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet [secretary] who issued the order for cessation and immediate compliance, the Director of the Division of Field Services [operations and enforcement] may vacate an order for cessation and immediate compliance determined to have been issued in error.

Section 4. Notice of Inspection and Noncompliance. (1) Issuance. If an authorized representative of the cabinet [secretary] issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he or she shall re-inspect the areas affected by the surface coal mining and reclamation operations or the coal exploration and reclamation operations [permit area] on or soon after the date given in the notice or order for completion of remedial measures. At the time of re-inspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed. Following such a determination, the cabinet shall:

1. For the situations in which the inspection was a re-inspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a re-inspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated following the preliminary hearing, initiate a formal hearing for suspension or revocation of the permit or approval, initiate a formal hearing for bond forfeiture, or initiate administrative proceedings for other appropriate relief [or an order to show cause why the permittee's permit should not be suspended or revoked and bond forfeited].

(3) Service. Service of a notice of inspection for noncompliance shall be in the manner set forth in Section 5 of this regulation.

Section 5. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, or notice of inspection of noncompliance shall be served on the person to whom it is issued or the person's designated agent promptly after issuance.

(2) Each notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, and notice of inspection of noncompliance [Such notices and orders] shall be served by hand, [or] by certified mail [return receipt requested], or by registered mail to the person to whom the notice or order has been [is] issued or to his or her designated agent for service. The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the notice or order. If no such individual can be located at the site, a copy of the notice or order may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order has been [is] issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. For surface coal mining and reclamation operations, service by mail shall be addressed to the designated agent for service; [or] to the permanent address of the permittee as identified [shown] on the permit or in the [and] application; or, if no address is identified for the permittee in [shown on] the application, to such other address as is known to the cabinet. For coal exploration and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the person conducting the coal exploration and reclamation operations as identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020; or, if no address is identified for the person conducting the coal exploration and reclamation operations in the notice or the application submitted pursuant to 405 KAR 8:020, to such other address as is known to the cabinet. If no person is present at the site of the surface coal mining and reclamation operations or the coal

exploration and reclamation operations, service by mail shall by itself be sufficient notice.

(3) Designation by any person of an agent for service of notices and orders issued pursuant to this regulation and notices of hearing issued pursuant to 405 KAR 7:090 shall be made a part of the applicable permit application, notice of intention to explore, or application for coal exploration and reclamation approval. Such person shall continue as agent for service of process until such time as written revision of the permit, a notice of intention to explore, or coal exploration and reclamation approval is made which designates another person as agent.

(4) The cabinet may furnish copies of notices and orders to any person having an interest which is or may be adversely affected by [, in] the coal exploration and reclamation operations or by the surface coal mining and reclamation operations and [, or] any person having an interest in the permit or exploration area.

Section 6. Expiration. When a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal expressly or by implication, such notice or order shall expire thirty (30) days after it is served unless a hearing pursuant to 405 KAR 7:090 is held at or near the mine site or the exploration site within that time except that such notices and orders shall not expire if the condition, practice, or violation in question has been abated or if the person to whom the notice or order has been issued has waived the preliminary hearing or has agreed to its postponement [has been waived]. Expiration of the order shall not affect the rights of the cabinet to assess appropriate penalties and to impose applicable sanctions with respect to the time period during which the order was in effect for the violations for which the order was issued.

Section 7. Suspension and [or] Revocation of Permits and Exploration Approvals. The cabinet may initiate formal hearings for suspension or revocation of permits and coal exploration and reclamation approvals, may initiate formal hearings for bond forfeitures, and may initiate formal hearings or judicial proceedings for other appropriate relief measures [issue an order to a permittee requiring that permittee to show cause why his or her permit or coal exploration approval should not be suspended or revoked pursuant to 405 KAR 7:090].

Section 8. Inability to Comply. (1) No notice or order issued pursuant to the regulations of this Title may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining whether a pattern of violations exists.

(3) Rapid compliance, good faith, diligence, and inability to comply may be considered in mitigation of proposed penalty assessments under 405 KAR 7:090.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower

auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment affects approximately 1,700 surface coal mining operations and the general public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. These enforcement procedures must apply equally to all surface coal mining operations subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

**NATURAL RESOURCES AND ENVIRONMENTAL  
PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement  
(Proposed Amendment)**

**405 KAR 16:050. Topsoil.**

RELATES TO: KRS 350.062, 350.405, 350.415, 350.465

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to

promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for the removal, storage and redistribution of topsoil and requirements for substitution of other materials for topsoil.

Section 1. General Requirements. (1) [Before further disturbance of an area,] All topsoil, topsoil substitutes and supplements, and subsoils to be saved under Section 2 of this regulation shall be [separately] removed as separate layers from the area to be disturbed and shall be segregated from other materials.

(2) After removal, such materials [topsoil] shall either be immediately redistributed in accordance with [as required under] Section 4 of this regulation or stockpiled pending redistribution in accordance with [as required under] Section 3 of this regulation.

(3) For surface areas which are without suitable topsoil as a result of previous surface coal mining operations, the cabinet shall approve and/or specify, on a site-specific basis, alternative practices designed to utilize those available materials which are most suitable for sustaining sufficient vegetation [supporting successful revegetation]. Such materials shall be tested for their chemical and physical properties as set forth in Section 2(5) of this regulation [including but not limited to: determination of compaction and erodibility potential, pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the cabinet]. The cabinet may require the application of nutrients and soil amendments as necessary for sustaining sufficient vegetation [supporting successful revegetation].

Section 2. Removal. (1)(a) For areas where topsoil is to be saved in accordance with this section, [Topsoil shall be removed from areas to be disturbed, after] vegetative cover that would interfere with the salvage or use of the topsoil shall be cleared from those areas prior to topsoil removal; however, topsoil shall be removed from those areas as a separate layer and shall be segregated from other materials prior to [is cleared from those areas, but before] any drilling, blasting, mining, or other surface disturbance of those areas.

(b) For situations in which the topsoil is of insufficient quantity or poor quality for sustaining sufficient vegetation, the materials approved by the cabinet in accordance with subsection (5) of this section shall be removed as a separate layer and segregated from other materials.

(2) Prior to placement of excess spoil or coal mine waste, construction of an embankment, or construction of any other structure for which stability is a concern, all topsoil and vegetative material shall be removed, either progressively or in a single set of operations, from all areas where failure to remove such materials would adversely affect the stability of the structure. For other areas disturbed by the structure and for all other areas disturbed by surface coal mining and reclamation



operations, all topsoil shall be removed in accordance with subsection (1) of this section, unless the use of topsoil substitute materials is approved by the cabinet in accordance with subsection (5) of this section or unless topsoil removal requirements are waived pursuant to subsection (6) of this section. [All topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the cabinet in accordance with subsection (5) of this section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.]

(3) If the topsoil is less than six (6) inches in depth, a six (6) inch layer that includes the topsoil [A horizon] and the unconsolidated materials immediately below the topsoil [A horizon] or the topsoil [A horizon] and all unconsolidated materials, if the total available is less than six (6) inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the cabinet pursuant to subsection (5) of this section.

(4) The B horizon and portions of the C horizon and/or other underlying layers demonstrated to have qualities for comparable root development shall be removed, segregated, and replaced as subsoil if the cabinet determines that either of these is necessary to comply with the revegetation requirements of 405 KAR 16:200 or [desirable] to ensure soil productivity consistent with the approved postmining land use.

(5) [(a)] Selected [overburden] materials may be substituted for or used as a supplement to topsoil, if the applicant demonstrates to the satisfaction of the cabinet [determines] that the resulting soil medium is equal to or more suitable for sustaining sufficient vegetation [revegetation] than is the available topsoil and that the resulting soil medium [substitute material] is the best available to support sufficient vegetation [revegetation]. This demonstration [determination] shall be based on:

(a) [1.] The results of chemical and physical analyses of the substitute or supplement materials [overburden] and the topsoil, which must be submitted in the permit application. These investigations [analyses] shall include:

1. Analyses performed by a qualified soil scientist, qualified agronomist, or other qualified specialist consisting of evaluations of the thicknesses of the soil horizons, the thicknesses of the substitute or supplement materials, the total depths of the soils, the areal extents of the different kind of soils, and the areal extents of the substitute or supplement materials; [determinations of compaction and erodibility potential,]

2. Analyses performed by a qualified laboratory consisting of evaluations of pH, net acidity or alkalinity, phosphorus, potassium, texture, and percent coarse fragments; [class,] and

3. Other analyses performed by qualified individuals, if [as] required by the cabinet, including but not limited to additional chemical and physical evaluations. [The cabinet may also require] field-site trials, greenhouse tests, and [or] other investigations [demonstrations by the applicant] to establish the feasibility of using the substitute or

supplement [these overburden] materials.

(b) [2.] A discussion from a qualified soil scientist or agronomist [Results of analyses, trials, and tests shall be submitted to the cabinet. Certification of trials and tests shall be made by a laboratory approved by the cabinet,] stating that: The proposed substitute or supplement materials are [is] equal to or more suitable for sustaining sufficient [the] vegetation than is the available topsoil; the resulting soil medium [substitute material] is the best available material to support sufficient [the] vegetation; and the trials and tests were conducted using approved standard testing procedures.

[(b)] Substituted or supplemental overburden material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this section.]

(6) The cabinet may choose not to require the removal of topsoil for minor disturbances which [Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution]:

(a) Occur at the site of small structures such as power poles, signs, and fence lines; or [The size of the area from which topsoil is removed at any one (1) time shall be limited;]

(b) Will not destroy the existing vegetation and will not cause erosion. [The surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized; and]

[(c)] Such other measures shall be taken as the cabinet may approve or require to control erosion.]

Section 3. Storage. (1) Topsoil and/or other materials removed pursuant to [under] Section 2 of this regulation shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(2) Stockpiled materials shall be selectively placed on [a] stable areas within the permit area; shall not be disturbed; and shall be protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(a) Protection measures shall be accomplished either by:

1. An effective cover of nonnoxious, quick-growing annual and perennial plants seeded or planted during the first normal seeding or planting period after removal and re-sown as necessary thereafter [for favorable planting conditions]; or

2. Other methods demonstrated to and approved by the cabinet to provide equal protection.

(b) Unless approved by the cabinet, stockpiled topsoil and/or other materials shall not be moved until required for redistribution on a regraded area.

(3) If such measures are demonstrated by the applicant to have no adverse affect on the topsoil and if approved by the cabinet, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed in accordance

with Section 2 of this regulation would be detrimental to the quality or quantity of those materials, the cabinet may approve the temporary distribution of the materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation provided that:

(a) Such action will not permanently diminish the capability of the topsoil and/or other materials of the host site; and

(b) The materials will be retained in a condition more suitable for redistribution than if stockpiled.

Section 4. Redistribution. (1) After final grading and before final placement [the replacement] of topsoil and other materials segregated in accordance with Section 2 [3] of this regulation, the [regraded] land shall be scarified or otherwise treated as required by the cabinet to eliminate slippage surfaces and to promote root penetration. If the permittee demonstrates [shows,] through appropriate tests[, and the cabinet approves,] that no harm will be caused to the materials [topsoil] and vegetation and if approved by the cabinet, scarification may be conducted after redistribution of topsoil and/or other materials [topsoiling].

(2) Topsoil and/or other materials shall be redistributed in a manner that:

(a) Achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours, and surface water drainage systems;

(b) Prevents excessive [excess] compaction of the topsoil and/or other materials; and

(c) Protects the topsoil and/or other materials from wind and water erosion before and after it is seeded and planted.

(3) The materials removed pursuant to Section 2 of this regulation shall be redistributed at a time when the physical and chemical properties of the materials can be protected and erosion can be minimized.

(4) The cabinet may choose not to require the redistribution of topsoil and/or other materials on approved postmining embankments of permanent impoundments and of roads if it determines that:

(a) Placement of topsoil and/or other materials on such embankments is inconsistent with the requirement to use the best technology currently available to minimize sedimentation; and

(b) Such embankments will be otherwise stabilized.

Section 5. Nutrients and Soil Amendments. Nutrients and soil amendments, in the amounts determined by soil tests, shall be applied to the redistributed materials [surface soil layer,] so that they are sufficient to sustain [it supports] the approved postmining land use and to sustain vegetation which is sufficient to meet[s] the revegetation requirements of 405 KAR 16:200. All soil tests shall be performed by a qualified laboratory using standard methods approved by the cabinet.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28,

1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment and its counterpart in Chapter 18 affect approximately 1700 surface coal mining and reclamation operations and the general public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be a minor increase in cost due to more complete analysis required for topsoil substitutes.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: A more detailed analysis is required for topsoil substitutes.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation must apply equally to all surface coal mining and reclamation operations subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

NATURAL RESOURCES AND ENVIRONMENTAL  
PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement  
(Proposed Amendment)

405 KAR 16:110. Surface and ground water monitoring.

RELATES TO: KRS 350.100, 350.405, 350.420, 350.465,

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and ground water levels and quality and aquifer conditions, and the required duration of such monitoring.

Section 1. General Requirements [Groundwater].  
(1) Surface and ground water monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located ground water monitoring wells, surface water monitoring stations, and quantity and quality parameters to demonstrate that:

(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area and adjacent area pursuant to 405 KAR 16:060;

(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 16:060, Section 1(3);

(c) Reclamation as required by KAR Title 405 is being accomplished and the operation is preventing material damage to the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);

(d) The mining operation, pursuant to 405 KAR 16:060, Section 8, has not proximately resulted in the contamination diminution, or interruption of a ground or surface water supply which is used for domestic, agricultural, industrial or other beneficial purpose; and

(e) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.

(2) Surface and ground water monitoring shall be coordinated with premining data collection by conducting surface and ground water monitoring at locations where premining data was collected, or by other appropriate data collection and analysis procedures which will allow a comparison of premining conditions with during-mining and postmining conditions.

(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and ground water quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is

located, pursuant to 405 KAR 16:060, Section 7.

(4)(a) Surface and ground water monitoring data collection shall begin at the time of initial disturbance and continue during mining and reclamation until final bond release.

(b) Surface and ground water monitoring data shall be collected quarterly and the results submitted to the cabinet within one (1) month after data collection.

(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.

(6) The cabinet may require the installation of additional ground water monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is needed to meet the requirements of subsection (1) of this section.

[(1) Groundwater levels, infiltration rates, subsurface flow and storage characteristics, and the quality of groundwater shall be monitored in a manner approved by the cabinet, to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the permit area and adjacent areas.]

[(2) When surface mining activities may affect the groundwater systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit area, groundwater levels and groundwater quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells, or springs where appropriate, that are adequate to reflect changes in groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.]

[(3) As specified and approved by the cabinet, the permittee shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall submit the results to the cabinet, to demonstrate compliance with 405 KAR 16:060, Sections 5 and 6 and this regulation.]

Section 2. Ground Water Monitoring [Surface Water]. (1) Ground water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, ground water monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate.

(3) Ground water monitoring wells shall meet the requirements of 405 KAR 8:030, Section 14(5).

(4) If the applicant can demonstrate to the satisfaction of the cabinet by use of the premining geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and

adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

[(1) Surface water monitoring and reporting shall be conducted in accordance with the monitoring program submitted under 405 KAR 8:030, Section 32(2)(d) and approved by the cabinet. The cabinet shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:]

[(a) Be adequate to measure accurately and record water quantity and quality of the discharges from the permit area;]

[(b) Include, but not be limited to, monitoring and reporting of all water quality parameters for which effluent limitations must be met under 405 KAR 16:070, Section 1(1)(g);]

[(c) All cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred shall result in the permittee notifying the cabinet within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the permittee shall forward the analytic results concurrently with the written notification to the cabinet; and]

[(d) Result in quarterly reports to the cabinet, to include analytical results from each sample taken during the quarter. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 USC Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the permittee may submit to the cabinet on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet NPDES permit requirements.]

[(2) Surface water flow and quality shall continue to be monitored as long as the water quality standards and effluent limitations of 405 KAR 16:070, Section 1(1)(g) are applicable.]

[(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.]

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:030, Section 32(4).

(2) At a minimum, surface water monitoring shall include the parameters of:

(a) Discharge; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 CFR Parts 122, 123 and 434

and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and ground water monitoring requirements of this regulation.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: This regulation sets forth requirements for the during-mining and postmining monitoring of surface water and ground water quantity and quality and affects all persons who hold permits to conduct surface coal mining operations under KAR Title 405, Chapters 7-24. This regulation also affects, directly or indirectly, the general public which lives in, or owns property in, the coal regions of Kentucky.

More particularly, the proposed amendments to this regulation will affect all persons who receive permits, amendments to permits, and some major revisions to permits, (estimated at approximately 1000 such applications per year) which are processed after the effective date of these amendments. Also, as required by the terms of a legal settlement agreement in Federal District Court, these amendments will affect approximately one-half of the some 1700 permits which have been issued under the permanent regulatory program.

(a) Direct and indirect costs or savings to those affected:

1. First year: Most applicants who previously would have been able to obtain variance from during-mining and postmining ground water monitoring requirements (approximately one-half of all permanent program permits issued thus far have obtained such variances) will not be able to obtain such variances under the proposed amendments, and thus will incur during-mining and postmining monitoring costs similar to the costs now routinely incurred by those operations which did not obtain such variances. Also, under the terms of the settlement agreement, during the first year many of the existing permittees who obtained such variances will be required to begin conducting ground water monitoring.

2. Continuing costs or savings: The cost of water monitoring required by the proposed amendments will continue in subsequent years until final bond release at approximately the same level as the first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed amendments will not have a significant impact on routine reporting requirements for permittees as a class, but will impose ground water data reporting requirements on some operations for which such data reporting would not have been necessary prior to these amendments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: These proposed amendments fulfill the requirements of a legal settlement agreement in Federal Court, and at the same time incorporate changes made necessary by changes in the corresponding federal surface mining regulations.

Tiering:

Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

**NATURAL RESOURCES AND ENVIRONMENTAL  
PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement  
(Proposed Amendment)**

**405 KAR 16:130. Disposal of excess spoil.**

RELATES TO: KRS 350.090, 350.410, 350.440, 350.465

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and

reclamation of surface areas affected by mining activities. This regulation sets forth specific requirements for the location of areas used for the disposal of excess spoil materials and the design, construction, and inspection of fill structures composed of such materials.

Section 1. General Requirements. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner to:

(a) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground water;

(b) Ensure mass stability and prevent mass movement during and after construction; and

(c) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(2) Design certification.

(a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.

(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill and all other features shall be sufficient to ensure stability of the fill and appurtenant structures under all stages and conditions of construction.

(3) Location. The disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements of Title 405, Chapters 7 through 24, and shall be placed, where possible, upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(4) Stability.

(a) Stability analyses shall be performed by a qualified, registered professional engineer. Parameters used in the stability analyses shall be based upon adequate investigations of foundation and fill material, as approved by the cabinet, including field reconnaissance; subsurface investigations; and data obtained from laboratory analyses of such materials or, if approved by the cabinet, data obtained from other sources that yield results which ensure compliance with the applicable stability requirements of this regulation. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.

(b) If the toe of the fill rests on an area which has a natural land slope in excess of 2.8:1v (thirty-six (36) percent) or such a lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock) and/or rock toe buttresses shall be constructed to ensure stability of the fill. Stability analyses shall be performed in accordance with 405 KAR 8:030, Section 27(3) to determine the sizes of the rock toe buttresses and/or keyway cuts.

(5) Placement of excess spoil.

(a) Vegetative and organic materials shall be

removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored and/or redistributed in accordance with 405 KAR 16:050. If approved by the cabinet, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding four (4) feet in thickness (or less if required by the cabinet to achieve the density necessary to ensure mass stability and to prevent mass movement, to avoid adverse impacts on the rock underdrain or rock core, or to minimize the formation of voids); concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with 405 KAR 16:050. The cabinet may approve designs which incorporate placement of excess spoil in lifts greater than four (4) feet in thickness if it is demonstrated to the cabinet's satisfaction in the application and certified by a qualified, registered professional engineer that the design ensures the stability of the fill in accordance with all applicable stability requirements of this regulation and that the design complies with all other requirements of this regulation.

(c)1. The final configuration of the fill shall be suitable for the approved postmining land use.

2. The top of the fill shall be graded no steeper than 20h:1v (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill. The outslope of the fill shall not exceed 2h:1v (fifty (50) percent) or such a lesser slope as may be required by the cabinet to ensure stability or minimize erosion.

3. Terraces may be constructed on the outslope of the fill if required for stability, for control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. The outslope between terrace benches shall not exceed 2h:1v (fifty (50) percent) or such a lesser slope as may be required by the cabinet to ensure stability or minimize erosion. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope. This ditch shall route runoff to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:1v (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved postmining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion.

(d) Impoundments shall not be allowed on the completed fill.

(e) Excess spoil that is acid-forming, toxic-forming, or combustible may be placed in excess spoil fills provided that it is disposed

of in accordance with 405 KAR 16:060 and 405 KAR 16:190. Section 3 and provided further that the disposal plan to be used is approved by the cabinet as part of the permit application.

(6) Drainage control.

(a) The fill design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability except the cabinet may waive underdrain requirements if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainageways, or wet-weather seeps and because seepage of water due to precipitation will not adversely affect the stability of the fill. In no case, except for head-of-hollow fills with rock-core chimney drains approved pursuant to Section 3 of this regulation, shall surface runoff from above the fill be diverted through or under the fill.

(b) Diversions associated with excess spoil fills and appurtenant structures shall comply with the applicable requirements of 405 KAR 16:080 and shall be designed and maintained to safely pass the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event, except as provided in Sections 2, 3, and 4 of this regulation and where flow from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid-forming, and nontoxic-forming rock; shall be free of coal, clay, and nondurable material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices.

1. The minimum cross-sectional dimensions of the underdrain shall be as specified in Appendix of A of this regulation unless the applicant demonstrates in the application, through detailed analyses to the satisfaction of the cabinet, that alternative cross-sectional dimensions will provide adequate long-term capacity for drainage at the site. In constructing the underdrain, no more than ten (10) percent of the rock shall be less than twelve (12) inches in size and no single rock shall be larger than twenty-five (25) percent of the width of the segment of the underdrain in which the rock is located.

2. Underdrains shall be constructed of durable rock that meets the durability requirements of Section 4(2)(a)2 of this regulation with the exception that, for shale material, the minimum SDI value necessary to demonstrate sufficient durability for underdrain material shall be 95.

3. Adequate samples shall be collected at sufficient geographic and stratigraphic locations and shall be tested and analyzed pursuant to this paragraph to determine, to the satisfaction of the cabinet, the characteristics of all variations of materials to be used in the underdrains. The results of such tests and



analyses shall be provided in the permit application.

4. Upon the request of the cabinet, the permittee shall, under the direction of a qualified, registered professional engineer, obtain adequate samples from the underdrain or other locations as necessary to demonstrate, to the satisfaction of the cabinet, compliance with this paragraph. Such samples shall be tested by a qualified laboratory and the results of such testing shall be analyzed by the qualified, registered professional engineer. The obtaining of samples, the testing, and the analyses shall be in the detail, scope, and time frame required by the cabinet to demonstrate, to the satisfaction of the cabinet, compliance with this paragraph. The results of such analyses shall be certified by the qualified, registered professional engineer under whose direction the samples were obtained and tested, and the results of the testing and the results of the analyses shall be submitted immediately to the department's appropriate regional office. The results of the testing and the results of analyses, or copies thereof, shall be reviewed by the qualified, registered professional engineer or specialist performing the inspections pursuant to Section 1(8) of this regulation and shall be included in the certified report immediately following the analyses.

(d) In lieu of the rock underdrain requirements of paragraph (c) of this subsection, perforated pipe underdrains may be approved by the cabinet on a case-by-case basis; however, perforated pipe underdrains shall not be approved for fills of greater than 250,000 cubic yards volume nor where failure of the fill could result in blockage of a stream or significant damage to the health or safety of the public. Perforated pipe underdrains shall be corrosion resistant; shall have characteristics consistent with the long-term life of the fill; shall be designed and constructed using current, prudent engineering practices; shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area; and shall be protected from clogging and contamination by a filter system designed and constructed to ensure long-term functioning of the perforated pipe underdrain using current, prudent engineering practices.

(7) Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(8) Inspections. A qualified, registered professional engineer, or other qualified professional specialist under the direction of a professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(a) Inspections of the fill site shall be made during critical construction periods as

necessary to ensure compliance with this regulation. Critical construction periods shall include at a minimum: foundation preparation including the removal of all organic material and topsoil; placement of underdrains and protective filter systems; installation of final surface drainage systems; completion of the final grading; and completion of the initial revegetating of the completed fill. In addition to the above, inspections of the fill site shall be made, beginning at the initial site-preparation phase of construction, at least once every three (3) months throughout construction of the fill, including during placement and compaction of fill materials.

(b) The qualified, registered professional engineer shall provide a certified report to the department's appropriate regional office within two (2) weeks after each inspection that the fill has been or is being constructed and maintained as designed and in accordance with the approved plan and this regulation. The report shall address appearances of instability, structural weakness, and other hazardous conditions.

(c) The certified reports on the drainage system and protective filter shall include color photographs taken during and after construction of the underdrain and protective filter but before the drainage system is covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

2. For situations in which excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials in accordance with Section 4 of this regulation, color photographs shall be taken of the underdrain as the underdrain system is being formed.

3. The photographs accompanying each certified report shall be taken in adequate size and number and with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(d) A copy of each inspection report shall be retained at or near the mine site.

(9) Underground disposal. Excess spoil may be disposed of in underground mine workings but only in accordance with a plan approved by the cabinet and MSHA in accordance with the requirements for underground disposal of coal processing waste under 405 KAR 8:040, Section 27.

[(1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be transported and placed in designated disposal areas within a permit area in a manner approved by the cabinet. The spoil shall be placed in a controlled manner to ensure:]

[(a) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the requirements of 405 KAR 16:070; and]

[(b) Stability of the fill.]

[(2) The fill shall be designed and certified by a registered professional engineer and approved by the cabinet.]

[(3) Vegetative and organic materials shall, either progressively or in a single operation,



be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under 405 KAR 16:050. If approved by the cabinet, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.]

[(4) Slope protection shall be provided to minimize surface-erosion at the site. Diversion design shall conform with the requirements of 405 KAR 16:080, Section 1. All disturbed areas, including diversion ditches that are not ripped, shall be vegetated upon completion of construction.]

[(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the cabinet. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.]

[(6) The spoil shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.]

[(7) The final configuration of the fill must be suitable for reclamation and revegetation compatible with the natural surroundings and suitable for the proposed postmining land uses approved in accordance with 405 KAR 16:210, except that no impoundments shall be allowed on the completed fill, and no depressions shall be allowed on the completed fill unless they are determined by the cabinet to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved postmining land use.]

[(8) Terraces may be utilized to control erosion and enhance stability if approved by the cabinet consistent with 405 KAR 16:190, Section 2(3) except that the safety factor shall be 1.5 and the twenty (20) feet maximum terrace width shall not apply.]

[(9) Where the toe of the spoil rests on a downslope or other area, where the natural land slope exceeds 1v:2.8h (thirty-six (36) percent) or such lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Stability analyses shall be performed in accordance with 405 KAR 8:030, Section 27(3) to determine the size of the rock toe buttresses and keyway cuts.]

[(10) The fill shall be inspected for stability by a qualified registered professional engineer or other qualified person under the direct supervision of the responsible registered professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: removal of all organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials; and revegetation. The responsible registered professional engineer shall certify to the cabinet within two (2) weeks after each inspection that the fill has been constructed as

specified in the design approved by the cabinet. A copy of the report shall be retained at the minesite.]

[(10)(a) [(11)] If approved by the cabinet, based on a demonstration to the satisfaction of the cabinet in the application that such disposal will have no adverse effect upon the stability of the fill, and if included as a condition of the permit, excess spoil [and underground development waste] may be disposed of in coal mine waste refuse piles [processing waste banks] in accordance with 405 KAR 16:140E or 405 KAR 18:140E.

(b) Coal processing waste [However, coal processing wastes] shall not be disposed of in [head-of-hollow or valley] fills designed and approved for excess spoil, [or underground development waste, and may only be disposed of in other fills designed and approved for underground development waste or excess spoil if such coal processing waste is] Underground development waste may be disposed of in excess spoil fills if such disposal is specifically approved by the cabinet and is made a condition of the permit and if such underground development waste is:

1. [(a)] Placed in accordance with 405 KAR 16:140E, Section 4;

2. [(b)] Demonstrated to be nontoxic-forming [non-toxic] and nonacid-forming; and

3. [(c)] Demonstrated to have no adverse effect upon the stability of the fill.

[(12) If the disposal area contains springs, natural or manmade water-courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.]

[(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigations, including any necessary laboratory testing of foundation materials, shall be performed in order to determine the stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.]

[(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the cabinet and MSHA upon the basis of a plan submitted under 405 KAR 8:040E, Section 27.]

Section 2. Valley Fills and Head-of-Hollow Fills. [Disposal of excess spoil in] Valley fills and head-of-hollow fills shall meet all of the requirements of Section 1 of this regulation and the additional requirements of this section, except as provided in Sections 3 and 4 of this regulation.

[(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.]

[(1) [(2)] A subdrainage system for the fill shall be constructed in accordance with Section 1(6)(c) or (d) of this regulation and with the following:

[(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:]

(a) [1.] Be installed along the natural drainage ways [system];

(b) [2.] Extend from the toe to the head of the fill; and

(c) [3.] Contain lateral drains to each area of potential drainage or seepage.

[(b) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.]

[(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A of this regulation unless the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that a smaller drain will provide adequate long-term capacity for drainage at the site.]

[(d) Underdrains shall consist of nondegradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay, or shale. However, alternative materials may be used if the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that the alternative materials will provide adequate long-term capacity for drainage at the site. Such alternative materials shall be nondegradable, and non-acid or toxic-forming.]

[(3) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the cabinet, in lifts no greater than four (4) feet.]

[(a) The cabinet may require lifts of less than four (4) feet in order to:]

[1. Achieve the densities designed to ensure mass stability;]

[2. Prevent mass movement;]

[3. Avoid contamination of the rock underdrain or rock core; and]

[4. Prevent formation of voids.]

[(b) The cabinet may approve lifts of greater than four (4) feet, or alternate methods of controlled placement, if the permittee demonstrates through appropriate engineering analysis in the permit application to the cabinet's satisfaction that the provisions of subparagraphs 1 through 4 of paragraph (a) of this subsection will be met.]

(2) [(4)] Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the cabinet. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion designs shall comply with the applicable requirements of 405 KAR 16:080[Section 1(6)].

[(5) The tops of the fill and any terrace

constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.]

[(6) Drainage shall not be directed over the outslope of the fill.]

[(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The cabinet may require a flatter slope.]

Section 3. Rock-Core Chimney Drains. (1) A rock core chimney drain may be used in a head-of-hollow fill [utilized as provided in this section] instead of the subdrain and surface runoff diversion system normally required, as long as the fill is not located in an area containing an intermittent or perennial stream. A rock-core chimney drain may be used in a valley fill if the fill volume does not exceed 250,000 cubic yards of material and if upstream drainage is diverted around the fill. [under Section 2(2) and (4) of this regulation for:]

[(a) All head-of-hollow fills; and]

[(b) All valley fills associated with contour mining and placed at or near the coal seam, which do not exceed 250,000 cubic yards in volume.]

(2) The rock core chimney drain shall be designed and constructed as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and the rock core shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 1(6)(c) [2(2)] of this regulation.

(b) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices [standard geotechnical engineering methods].

(c) 1. The grading of the fill surface shall [may] drain runoff [from the fill surface] away from the outslope of the fill and may drain runoff toward the rock core. In no case, however, shall intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v [1v:33h] (three (3) percent). Terraces on the fill shall be graded with a three (3) to five (5) percent slope toward the fill and a one (1) percent slope toward the rock core.

2. [Notwithstanding the requirement of Section 1(7) prohibiting depressions and impoundments,] A drainage pocket may be maintained at the head of the fill during and after construction to intercept and collect surface runoff [from the fill surface] and to discharge the runoff through or over the rock drain, if it is demonstrated to the satisfaction of the cabinet in the application and certified by a qualified, registered professional engineer that the stability of the fill will [is] not be impaired.

[The drainage pocket and rock core shall not be used to intercept and discharge runoff from the drainage area upstream from the fill.] In no case shall this drainage pocket have a potential for impounding more than 10,000 cubic feet of water. [Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.]

(3) The drainage control system shall be capable of safely passing [safely] the runoff from a 100-year, twenty-four (24) hour precipitation event or a larger event if specified by the cabinet.

Section 4. End-dumped fills [Hard Rock Spoil]. The cabinet may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts provided the following conditions are met:

(1) Except as provided in this section, the requirements of Sections 1 and 2 of this regulation are met.

(2)(a)1. The excess spoil is nontoxic-forming and nonacid-forming and consists of at least eight (80) percent, by volume, of durable rock that is free of coal, clay, and nondurable material.

2. Durable rock means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79) incorporated herein by reference (copies of which may be obtained from the department). The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

3. Adequate samples shall be collected at sufficient geographic and stratigraphic locations and shall be tested and analyzed pursuant to this subsection to determine, to the satisfaction of the cabinet, the characteristics of all variations of materials to be placed in the end-dumped fill. The results of such tests and analyses shall be provided in the permit application.

(b) All noncemented and poorly cemented shale, clay, soil, and nondurable excess spoil materials disposed of in the fill shall be distributed, to the satisfaction of the cabinet, within the fill by selective dumping or other adequate methods of placement to avoid localized concentrations of nondurable materials which would adversely affect the stability or internal drainage of the fill.

(3) The fill shall be designed and constructed to attain a minimum long-term static safety factor of 1.5 and a minimum earthquake safety factor of 1.1

(4) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials

provided that the resulting underdrain system is capable of carrying, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area and provided that the other requirements for drainage control are met. For situations (such as the dumping of fill material from an insufficient height or on an insufficient slope) in which, in the judgment of the cabinet, the natural segregation of dumped materials will not form an adequate underdrain system, the underdrain system shall be separately constructed in accordance with Section 1(6) of this regulation.

(5) Upon the request of the cabinet, the permittee shall, under the direction of a qualified, registered professional engineer, obtain adequate samples from the fill or other locations as necessary to demonstrate, to the satisfaction of the cabinet, compliance with this section. Such samples shall be tested by a qualified laboratory and the results of such testing shall be analyzed by the qualified, registered professional engineer. The obtaining of samples, the testing, and the analyses shall be in the detail, scope, and time frame required by the cabinet to demonstrate, to the satisfaction of the cabinet, compliance with this section. The results of such analyses shall be certified by the qualified, registered professional engineer under whose direction the samples were obtained and tested, and the results of the testing and the results of the analyses shall be submitted immediately to the department's appropriate regional office. The results of the testing and the results of analyses, or copies thereof, shall be reviewed by the qualified, registered professional engineer or specialist performing the inspections pursuant to Section 1(8) of this regulation and shall be included in the certified report immediately following the analyses.

(6) The surface drainage control system shall be designed and constructed in accordance with Sections 1 and 2 of this regulation except that in all situations surface water runoff from areas adjacent to and above the fill and any appurtenant structures shall not flow onto the fill and shall be diverted into stabilized diversion channels designed to meet the applicable requirements of 405 KAR 16:080 and to safely pass the runoff from a 100 year, twenty-four (24) hour precipitation event.

[(1) In lieu of the requirements of Section 2 of this regulation and of the requirement in Section 1(6) of this regulation to place spoil in horizontal lifts in a controlled manner and for concurrent compaction, the cabinet may approve alternate methods for disposal of hard rock spoil, which may include fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized, and provided the requirements of this section and all other requirements of Section 1 of this regulation, including the factor of safety, are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water.]

Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the cabinet.]

[(2) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.]

[(a) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.]

[(b) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the cabinet.]

[(3) (a) Stability analyses shall be made by a registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations including necessary borings, and laboratory tests.]

[(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety in Appendix B of this regulation.]

[(4) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.]

[(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on appropriate records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.]

[(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.]

[(c) When necessary to ensure proper long-term functioning of the internal drainage system, the internal drain shall be protected by a properly designed filter system.]

[(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 16:080, Section 1(6).]

[(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.]

[(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will safely pass a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 16:080, Section 1(6).]

[(8) Terraces shall be constructed on the

outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:]

[(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).]

[(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.]

[(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.]

Section 5. Disposal on Existing Benches. (1) If [When] approved by the cabinet, excess spoil may be disposed of on pre-existing benches that have not been reclaimed to the standards of this Title and for which there is no continuing responsibility to reclaim to such standards, provided that all of the requirements set forth in Section 1(1), 2(a), (4) through (8), and (10) of this regulation and the requirements of this section are met. [created by surface coal mining operations conducted prior to May 3, 1978.]

(a) Excess spoil shall be placed only on the solid portion of the pre-existing bench. [The applicant shall demonstrate to the satisfaction of the cabinet that the spoil to be placed on the existing benches is in excess of the spoil necessary to eliminate the highwall and return to approximate original contour on the active mining bench.]

[(b) All areas to be affected shall be included in the permit area.]

[(c) The excess spoil shall be placed only on solid portions of the existing bench, and shall be placed in a controlled manner to eliminate as much of the existing highwall as practicable.]

(b) [(d)] The excess spoil shall be placed in horizontal lifts, concurrently compacted as necessary to ensure mass stability and prevent mass movement with a long-term static safety factor of 1.3, and graded to allow surface and subsurface drainage compatible with the natural surroundings. The final graded slopes shall not exceed 2h:1v [1v:2h] (fifty (50) percent) except [that] the cabinet may approve steeper slopes which provide a minimum long-term static safety factor of 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining.

(c) The pre-existing bench shall be backfilled and graded to:

1. Achieve the most moderate slope possible which does not exceed the angle of repose; and

2. Eliminate the highwall to the maximum extent technically practicable.

(2) Gravity transport of excess spoil.

(a) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport may be approved by the cabinet if the applicant identifies the gravity transport courses on a map in the permit application and the applicant demonstrates, to the satisfaction of the cabinet, that the plan for gravity transport will minimize hazards to the environment and to the health and safety of the public and that the plan ensures that damage between benches and

downslope of the pre-existing bench will be minimized if spoil moves in an unapproved manner during activities related to the disposal of the spoil or after placement of the spoil on the pre-existing bench. [When approved by the cabinet, excess spoil may be moved by controlled gravity transport from an actively mined upper bench to an existing lower bench, if the highwall of the lower bench intersects the upper bench with no natural slope between them other than the natural slope of the undisturbed natural barrier required by 405 KAR 16:010.]

(b) The disposal of material in accordance with this subsection shall comply with the following: [The gravity transport points shall be determined by the applicant on a site specific basis and approved by the cabinet to minimize hazards to health and safety and to ensure that damage will be minimized if the spoil should accidentally move off the existing bench to the downslope.]

1. [(c)] All excess spoil placed on the lower bench by gravity transport, including the spoil immediately below the points of gravity transport, shall be rehandled and placed as required under subsection (1) of this section. Spoil remaining on the lower bench from prior operations need not be rehandled unless such rehandling is [except when] necessary to ensure stability of the fill.

2. [(d)] A safety berm shall be constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil to the lower bench. The safety berm shall be of sufficient height, width, and length to prevent the gravity transported spoil from moving off the lower bench to the downslope. If [Where] there is insufficient material from previous operations [remaining] on the lower bench to construct the safety berm, only that amount of excess spoil necessary for construction of the safety berm may be gravity transported to the lower bench prior to construction of the safety berm. The safety berm shall be removed during final grading operations.

3. Excess spoil shall not be allowed on the downslope below the upper bench and above the highwall of the pre-existing bench except on designated gravity transport courses properly prepared according to 405 KAR 16:050. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport courses between the two (2) benches and each transport course shall be reclaimed in accordance with the applicable requirements of this chapter.

Section 6. Applicability of Amendments to this Regulation. (1) Any excess spoil fill on which the final grading is conducted prior to the effective date of amendments to this regulation shall, in lieu of the requirements of the amendments, comply with the requirements which preceded the amendments, the approved permit application, and the conditions of permit issuance.

(2) Any excess spoil fill in a construction phase beyond initial site preparation prior to ninety (90) days following the effective date of amendments to this regulation shall, beginning on the effective date of these amendments, comply with all provisions of this regulation as amended, except that for situations in which any requirement of an amendment to this regulation

would affect the design and construction of the fill to the extent that the design plans previously approved in the permit would have to be revised, such requirement shall not apply and the fill may be constructed in accordance with the previously approved design plans. However, the permittee may, if desired, apply for a permit revision in accordance with 405 KAR 8:010, Section 20 to modify the design of the fill to comply with the amendments to this regulation.

(3) Any excess spoil fill for which construction begins on or after the 90th day following the effective date of amendments to this regulation shall comply with all provisions of this regulation as amended.

(4) With regard to any excess spoil fill approved in a permit issued prior to the effective date of these amendments, the permittee shall not be required to have slake durability index tests conducted solely for the purpose of including the results of such tests in the permit application; however, the permittee shall have such tests performed if required by the cabinet under Section 1(6)(c)4 or Section 4(5) of this regulation. This exemption shall not apply to excess spoil fills for which construction begins on or after one (1) year following the effective date of these amendments.

#### Appendix A of 405 KAR 16:130

##### Minimum Drain Segment Cross-Sectional Dimensions [Size]

Total cumulative volume [amount] of fill material to be drained by segment	Predominant type of fill material	Minimum size of drain segment in feet	
		Width	Height
Less than 1,000,000 yd <sup>3</sup>			
[yd <sup>3</sup> .....]	Sandstone	10	4
[Do.....]	Shale	16	8
More than 1,000,000 yd <sup>3</sup>			
[yd <sup>3</sup> .....]	Sandstone	16	8
[Do.....]	Shale	16	16

The underdrain may be divided into segments for purposes of determining required dimensions of the individual drain segments. Each segment will drain the volume of fill overlying the segment plus carry the water drained to the segment from areas of the fill located upstream of the segment. Where the cumulative volume of the fill material to be drained by a segment is less than 1,000,000 yd<sup>3</sup>, the smaller dimension may be used.

#### [Appendix B of 405 KAR 16:130

##### Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1]

CHARLOTTE E. BALDWIN, Secretary  
APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 14, 1985 at 2:30 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment and its counterpart in Chapter 18 affect approximately 1700 surface coal mining operations and the general public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: These amendments contain numerous changes, many of which merely serve to clarify the existing requirements; but several result in substantive changes. Some of the changes will result in savings to the industry for certain types of fills. Some of the changes related to the design of fills, testing of materials, and inspection of construction will mean some additional costs. However, these changes should not significantly affect the construction cost which is the major factor in the overall costs related to excess spoil fills.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There is a new requirement to photograph underdrains during construction.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. These requirements must apply equally to all excess spoil fills subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Proposed Amendment)

#### 405 KAR 16:170. Stabilization of surface areas. [Air resources protection.]

RELATES TO: KRS 224.033, 350.020, 350.465

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for the protection of people, [and] property, land, water, [and other] natural resources, and aesthetic values during surface mining activities and for the restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for the stabilization of surface areas [control and monitoring of air pollution from surface mining activities,] with specific measures for the control of fugitive dust.

Section 1. Stabilization of Surface Areas. All exposed surface areas shall be protected and stabilized to effectively control and limit erosion and air pollution attendant to erosion (fugitive dust). [Fugitive Dust Control. Each permittee shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining, and reclamation operations.]

Section 2. Control Measures. The fugitive dust control measures to be used shall include, as necessary, but not be limited to:

(1) Periodic watering of unpaved roads;

(2) Chemical stabilization of unpaved roads with proper application of non-toxic soil cement or dust palliatives;

(3) Paving of roads;

(4) Prompt removal of coal, rock, soil, and other dust-forming debris from roads and frequent scraping of and compaction of unpaved roads to stabilize the road surfaces;

(5) Revegetating, mulching, or otherwise stabilizing the surfaces of all areas adjoining roads that are sources of fugitive dust;

(6) Restricting the travel of vehicles on areas other than established roads;

(7) Minimizing the area of disturbed land;

(8) Prompt revegetation or other stabilization of disturbed lands; and

(9) Planting of special windbreak vegetation at critical points in the permit area.

[Section 3. Additional Measures. Where the cabinet determines that application of fugitive dust control measures listed in Section 2 of this regulation is inadequate, the cabinet may require additional measures and practices as necessary.]

[Section 4. Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air quality monitoring plan if required under 405 KAR 8:030, Section 35, and approved by the cabinet.]

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment and its counterpart in Chapter 18 affect approximately 1700 surface coal mining and reclamation operations and the general public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation must apply equally to all surface coal mining and reclamation operations subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Surface Mining Reclamation and Enforcement  
(Proposed Amendment)

#### 405 KAR 18:050. Topsoil.

RELATES TO: KRS 350.151, 350.405, 350.415, 350.465

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the removal, storage and redistribution of topsoil and requirements for substitution of other materials for topsoil.

Section 1. General Requirements. (1) All [Before further disturbance of areas affected by surface operations,] topsoil, topsoil substitutes and supplements, and subsoils to be saved under Section 2 of this regulation shall be [separately] removed as separate layers from the area to be disturbed and shall be segregated from other materials.

(2) After removal, such materials [topsoil] shall either be immediately redistributed in accordance with Section 4 of this regulation or stockpiled pending redistribution in accordance with [under] Section 3 of this regulation[, or if the permittee can demonstrate that an alternative procedure will provide equal or more protection for the topsoil, the cabinet may, on a case by case basis, approve an alternative].

(3) For surface areas which are without suitable topsoil as a result of previous surface coal mining operations, the cabinet shall approve and/or specify, on a site-specific basis, alternative practices designed to utilize those available materials which are most suitable for sustaining sufficient vegetation [supporting successful revegetation]. Such materials shall be tested for their chemical and physical properties as set forth in Section 2(5) of this regulation [, including but not limited to: determinations of compaction and erodibility potential, pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the cabinet]. The cabinet may require the application of nutrients and soil amendments as necessary for sustaining sufficient vegetation [supporting successful revegetation].

Section 2. Removal. (1)(a) For areas where topsoil is to be saved in accordance with this section, [Topsoil shall be removed from areas to be affected by surface operations or major structures, after] vegetative cover that would interfere with the salvage or use of the topsoil shall be cleared from those areas prior to topsoil removal; however, topsoil shall be removed from those areas as a separate layer and shall be segregated from other materials prior to [is cleared from portions of those areas that



will be disturbed, but before] any drilling, [for] blasting, mining, or other surface disturbance of those areas [surface lands].

(b) For situations in which the topsoil is of insufficient quantity or poor quality for sustaining sufficient vegetation, the materials approved by the cabinet in accordance with subsection (5) of this section shall be removed as a separate layer and segregated from other materials.

(2) Prior to placement of excess spoil or coal mine waste, construction of an embankment, or construction of any other structure for which stability is a concern, all topsoil and vegetative material shall be removed, either progressively or in a single set of operations, from all areas where failure to remove such materials would adversely affect the stability of the structure. For other areas disturbed by the structure and for all other areas disturbed by surface coal mining and reclamation operations, all topsoil shall be removed in accordance with subsection (1) of this section, unless the use of topsoil substitute materials is approved by the cabinet in accordance with subsection (5) of this section or unless topsoil removal requirements are waived pursuant to subsection (6) of this section. [Topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the cabinet in accordance with subsection (5) of this section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.]

(3) If the topsoil is less than six (6) inches in depth, a six (6) inch layer that includes the topsoil [A horizon] and the unconsolidated materials immediately below the topsoil [A horizon] or the topsoil [A horizon] and all unconsolidated materials, if the total available is less than six (6) inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the cabinet pursuant to subsection (5) of this section.

(4) The B horizon and portions of the C horizon and/or other underlying layers demonstrated to have qualities for comparable root development shall be removed, segregated, and replaced as subsoil if the cabinet determines that either of these is necessary to comply with the revegetation requirements of 405 KAR 18:200 or [desirable] to ensure soil productivity consistent with the approved postmining land use.

(5) [(a)] Selected [overburden] materials may be substituted for or used as a supplement to topsoil, if the applicant demonstrates to the satisfaction of the cabinet [determines] that the resulting soil medium is equal to or more suitable for sustaining sufficient vegetation [revegetation] than is the available topsoil and that the resulting soil medium [substitute material] is the best available to support sufficient [the] vegetation. This demonstration [determination] shall be based on:

(a) [1.] The results of chemical and physical analyses of the substitute or supplement materials [overburden] and the topsoil, which must be submitted in the permit application. These investigations [analyses] shall include:

1. Analyses performed by a qualified soil scientist, qualified agronomist, or other

qualified specialist consisting of evaluations of the thicknesses of the soil horizons, the thicknesses of the substitute or supplement materials, the total depths of the soils, the areal extents of the different kinds of soils, and the areal extents of the substitute or supplement materials; [determinations of compaction and erodibility potential,]

2. Analyses performed by a qualified laboratory consisting of evaluations of pH, net acidity or alkalinity, phosphorus, potassium, texture, and percent coarse fragments; [class,] and

3. Other analyses performed by qualified individuals, if [as] required by the cabinet, including but not limited to additional chemical and physical evaluations, [The cabinet may also require] field-site trials, greenhouse tests, and [or] other investigations [demonstrations by the applicant] to establish the feasibility of using the substitute or supplement [these overburden] materials.

(b) [2.] A discussion from a qualified soil scientist or agronomist [Results of analyses, trials, and tests shall be submitted to the cabinet. Certification of trials and tests shall be made by a laboratory approved by the cabinet,] stating that: The proposed substitute or supplement materials are [is] equal to or more suitable for sustaining sufficient [the] vegetation than is the available topsoil; the resulting soil medium [substitute material] is the best available material to support sufficient [the] vegetation; and the trials and tests were conducted using approved standard testing procedures.

[(b)] Substituted or supplemental overburden material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this section.]

(6) [(5)] The cabinet may choose not to require the removal of topsoil for minor disturbances which:

(a) Occur at the site of small structures such as power poles, signs, and fence lines; or

(b) Will not destroy the existing vegetation and will not cause erosion. [Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution:]

[(a)] The size of the area from which topsoil is removed at any one (1) time shall be limited;]

[(b)] The surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized; and]

[(c)] Such other measures shall be taken as the cabinet may approve or require to control erosion.]

Section 3. Storage. (1) Topsoil and/or other materials removed pursuant to [under] Section 2 of this regulation shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(2) Stockpiled materials shall be selectively placed on [a] stable areas within the permit area; shall not be disturbed; and shall be protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(a) Protection measures shall be accomplished either by:

1. An effective cover of nonnoxious, quick-growing annual and perennial plants seeded or planted during the first normal seeding or planting period after removal and re-sown as necessary thereafter [for favorable planting conditions]; or

2. Other methods demonstrated to and approved by the cabinet to provide equal protection.

(b) Unless approved by the cabinet, stockpiled topsoil and/or other materials shall not be moved until required for redistribution on a regraded area.

(3) If such measures are demonstrated by the applicant to have no adverse affect on the topsoil and if approved by the cabinet, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed in accordance with Section 2 of this regulation would be detrimental to the quality or quantity of those materials, the cabinet may approve the temporary distribution of the materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation provided that:

(a) such action will not permanently diminish the capability of the topsoil and/or other materials of the host site; and

(b) The materials will be retained in a condition more suitable for redistribution than if stockpiled.

Section 4. Redistribution. (1) After final grading and before final placement of topsoil and other materials segregated in accordance with Section 2 [3] of this regulation, the land shall be scarified or otherwise treated as required by the cabinet to eliminate slippage surfaces and to promote root penetration. If the permittee demonstrates [shows,] through appropriate tests[, and the cabinet approves,] that no harm will be caused to the materials [topsoil] and vegetation and if approved by the cabinet, scarification may be conducted after redistribution of topsoil and/or other materials [topsoiling].

(2) Topsoil and/or other materials shall be redistributed in a manner that:

(a) Achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours [slopes], and surface water drainage systems;

(b) Prevents excessive [excess] compaction of the topsoil and/or other materials; and

(c) Protects the topsoil and/or other materials from wind and water erosion before and after it is seeded and planted.

(3) The materials removed pursuant to Section 2 of this regulation shall be redistributed at a time when the physical and chemical properties of the materials can be protected and erosion can be minimized.

(4) The cabinet may choose not to require the redistribution of topsoil and/or other materials on approved postmining embankments of permanent impoundments and of roads if it determines that:

(a) Placement of topsoil and/or other materials on such embankments is inconsistent with the requirement to use the best technology

currently available to minimize sedimentation; and

(b) Such embankments will be otherwise stabilized.

Section 5. Nutrients and Soil Amendments. Nutrients and soil amendments, in the amounts determined by soil tests, shall be applied to the redistributed materials [surface soil layer,] so that they are sufficient to sustain [it supports] the approved postmining land use and to sustain vegetation which is sufficient to meet the revegetation requirements of 405 KAR 18:200. All soil tests shall be performed by a qualified laboratory using standard methods approved by the cabinet.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment and its counterpart in Chapter 16 affect approximately 1700 surface coal mining and reclamation operations and the general public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be a minor increase in cost due to more complete analysis required for topsoil substitutes.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: A more detailed analysis is required for topsoil substitutes.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions: N/A

(6) Any additional information or comments:  
None

Tiering:

Was tiering applied? No. This regulation must apply equally to all surface coal mining and reclamation operations subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

**NATURAL RESOURCES AND ENVIRONMENTAL  
PROTECTION CABINET**  
Department for Surface Mining Reclamation  
and Enforcement  
(Proposed Amendment)

405 KAR 18:110. Surface and ground water monitoring.

RELATES TO: KRS 350.100, 350.151, 350.405, 350.420, 350.465,

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.151, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the monitoring and reporting of surface water quality and quantity, and ground water levels and quality and aquifer conditions; and the required duration of such monitoring.

Section 1. General Requirements [Groundwater].

(1) Surface and ground water monitoring shall be conducted in a manner acceptable to the cabinet and utilize, at a minimum, a sufficient number of appropriately located ground water monitoring wells, surface water monitoring stations, and quantity and quality parameters to demonstrate whether:

(a) The mining and reclamation operations are conducted in such a manner as to minimize disturbances to the hydrologic balance within the permit area and adjacent area pursuant to 405 KAR 18:060;

(b) The mining operation is meeting applicable effluent limitations and stream standards as required by 405 KAR 18:060, Section 1(3);

(c) Reclamation as required by KAR Title 405 is being accomplished and the operation is preventing material damage to the hydrologic balance in the cumulative impact area pursuant to 405 KAR 8:010, Section 14(2) and (3);

(d) The mining operation meets water quality criteria for bond release pursuant to 405 KAR 10:040.

(2) Surface and ground water monitoring shall be coordinated with premining data collection by conducting surface and ground water monitoring at locations where premining data was collected, or by other appropriate data collection and analysis procedures which will allow a comparison of premining conditions with

during-mining and postmining conditions.

(3) Equipment, structures, monitoring wells, or other facilities used to monitor surface and ground water quantity and quality shall be properly installed, maintained, and operated, and shall be removed or otherwise properly disposed of, including sealing of monitoring wells, when no longer needed; except that monitoring wells may be transferred to the surface owner of lands where the well is located, pursuant to 405 KAR 18:060, Section 6.

(4)(a) Surface and ground water monitoring data collection shall begin at the time of initial disturbance and continue during mining and reclamation until final bond release.

(b) Surface and ground water monitoring data shall be collected quarterly and the results submitted to the cabinet within one (1) month after data collection.

(5) If the results of any data collection indicate noncompliance with a permit condition, the permittee shall promptly notify the cabinet in writing and shall take immediate corrective actions to return the operations to compliance with all permit conditions.

(6) The cabinet may require the installation of additional ground water monitoring wells and surface water monitoring stations, the collection of additional quantity and quality parameters, and more frequent data collection and submittal if additional information is needed to meet the requirements of subsection (1) of this section.

[(1) Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the cabinet, to determine the effects of underground mining activities on the quantity and quality of water in ground water systems in the permit area and adjacent areas.]

[(2) When underground mining activities may affect ground water systems which serve as aquifers which significantly ensure the hydrologic balance or water use either on or off the permit area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells, or springs where appropriate, that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of the underground mining activities if necessary to minimize disturbance to the prevailing hydrologic balance.]

[(3) As specified and approved by the cabinet, the permittee shall conduct additional hydrologic tests, including drilling, infiltration tests and aquifer tests, and the results shall be submitted to the cabinet to demonstrate compliance with this section.]

Section 2. Ground Water Monitoring [Surface Water]. (1) Ground water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, ground water monitoring shall include the parameters of:

(a) Water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved

manganese; acidity; alkalinity; and sulfate.

(3) Ground water monitoring wells shall meet the requirements of 405 KAR 8:040, Section 14(5).

(4) If the applicant can demonstrate to the satisfaction of the cabinet by use of the premining geologic or hydrologic information, the mining and reclamation plan, and the determination of probable hydrologic consequences that a particular water transmitting zone in the proposed permit and adjacent area is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that water transmitting zone may be waived by the cabinet.

[(1) Surface water monitoring and reporting shall be conducted in accordance with the monitoring program submitted under 405 KAR 8:040, Section 32(2)(c) and approved by the cabinet. The cabinet shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall:]

[(a) Be adequate to measure accurately and record water quantity and quality of discharges from the permit area;]

[(b) Include, but not be limited to, monitoring and reporting of all water quality parameters for which effluent limitations must be met under 405 KAR 18:070, Section 1(1)(g);]

[(c) All cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred shall result in the permittee notifying the cabinet within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the permittee shall forward the analytic results concurrently with the written notification to the cabinet; and]

[(d) Result in quarterly reports to the cabinet, to include analytical results from each sample taken during the quarter. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 USC Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the permittee may submit to the cabinet on the same time schedule as required by the NPDES permit, or within ninety (90) days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet NPDES permit requirements.]

[(2) Surface water flow and quality shall continue to be monitored as long as the water quality standards and effluent limitations of 405 KAR 18:070, Section 1(1)(g) are applicable.]

[(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the surface disturbed area and from underground mine workings shall be properly installed, maintained, and operated and shall be removed when no longer required.]

Section 3. Surface Water Monitoring. (1) Surface water monitoring shall be conducted according to the requirements of Section 1 of this regulation and the monitoring plan required by 405 KAR 8:040, Section 32(4).

(2) At a minimum, surface water monitoring

shall include the parameters of:

(a) Discharge; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(3) Surface water monitoring for KPDES.

(a) Monitoring of point source discharges under a KPDES permit shall be conducted in accordance with 40 CFR Parts 122, 123, and 434 and in accordance with the requirements of the KPDES permit. The permittee shall submit a copy of the KPDES monitoring results to the cabinet on the time schedule and in the format required by the KPDES permit. The permittee shall report all noncompliances with the KPDES permit to the cabinet in the manner required by the KPDES permit.

(b) Compliance with KPDES monitoring requirements shall not relieve the permittee of the obligation to comply with other surface and ground water monitoring requirements of this regulation.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

(1) Type and number of entities affected: This regulation sets forth requirements for the during-mining and postmining monitoring of surface water and ground water quantity and quality and affects all persons who hold permits to conduct surface coal mining operations under KAR Title 405, Chapters 7-24. This regulation also affects, directly or indirectly, the general public which lives in, or owns property in, the coal regions of Kentucky.

More particularly, the proposed amendments to this regulation will affect all persons who receive permits, amendments to permits, and some major revisions to permits, (estimated at approximately 1000 such applications per year) which are processed after the effective date of these amendments. Also, as required by the terms of a legal settlement agreement in Federal District Court, these amendments will affect approximately one-half of the some 1700 permits which have been issued under the permanent regulatory program.

(a) Direct and indirect costs or savings to those affected:

1. First year: Most applicants who previously would have been able to obtain variances from during-mining and postmining ground water monitoring requirements (approximately one-half

of all permanent program permits issued thus far have obtained such variances) will not be able to obtain such variances under the proposed amendments, and thus will incur during-mining and postmining monitoring costs similar to the costs now routinely incurred by those operations which did not obtain such variances. Also, under the terms of the settlement agreement, during the first year many of the existing permittees who obtained such variances will be required to begin conducting ground water monitoring.

2. Continuing costs or savings: The cost of water monitoring required by the proposed amendments will continue in subsequent years until final bond release at approximately the same level as the first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed amendments will not have a significant impact on routine reporting requirements for permittees as a class, but will impose ground water data reporting requirements on some operations for which such data reporting would not have been necessary prior to these amendments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: These proposed amendments fulfill the requirements of a legal settlement agreement in Federal Court, and at the same time incorporate changes made necessary by changes in the corresponding federal surface mining regulations.

#### Tiering:

Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapter 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Proposed Amendment)

405 KAR 18:130. Disposal of [underground development waste and] excess spoil.

RELATES TO: KRS 350.090, 350.151, 350.410, 350.440, 350.465

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements for the location of areas used for the disposal of [underground development waste and] excess spoil materials and the design, construction, and inspection of fill structures composed of such materials.

Section 1. General Requirements. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner to:

(a) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground water;

(b) Ensure mass stability and prevent mass movement during and after construction; and

(c) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(2) Design certification.

(a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.

(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill and all other features shall be sufficient to ensure stability of the fill and appurtenant structures under all stages and conditions of construction.

(3) Location. The disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements of Title 405, Chapters 7 through 24, and shall be placed, where possible, upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(4) Stability.

(a) Stability analyses shall be performed by a qualified, registered professional engineer. Parameters used in the stability analyses shall be based upon adequate investigations of foundation and fill material, as approved by the cabinet, including field reconnaissance; subsurface investigations; and data obtained

from laboratory analyses of such materials or, if approved by the cabinet, data obtained from other sources that yield results which ensure compliance with the applicable stability requirements of this regulation. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.

(b) If the toe of the fill rests on an area which has a natural land slope in excess of 2.8h:lv (thirty-six (36) percent) or such a lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock) and/or rock toe buttresses shall be constructed to ensure stability of the fill. Stability analyses shall be performed in accordance with 405 KAR 8:040, Section 28 to determine the sizes of the rock toe buttresses and/or keyway cuts.

(5) Placement of excess spoil.

(a) Vegetative and organic materials shall be removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored and/or redistributed in accordance with 405 KAR 18:050. If approved by the cabinet, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding four (4) feet in thickness (or less if required by the cabinet to achieve the density necessary to ensure mass stability and to prevent mass movement, to avoid adverse impacts on the rock underdrain or rock-core, or to minimize the formation of voids); concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with 405 KAR 18:050. The cabinet may approve designs which incorporate placement of excess spoil in lifts greater than four (4) feet in thickness if it is demonstrated to the cabinet's satisfaction in the application and certified by a qualified, registered professional engineer that the design ensures the stability of the fill in accordance with all applicable stability requirements of this regulation and that the design complies with all other requirements of this regulation.

(c)1. The final configuration of the fill shall be suitable for the approved postmining land use.

2. The top of the fill shall be graded no steeper than 20h:lv (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill. The outslope of the fill shall not exceed 2H:lv (fifty (50) percent) or such a lesser slope as may be required by the cabinet to ensure stability or minimize erosion.

3. Terraces may be constructed on the outslope of the fill if required for stability, for control of erosion, to conserve soil moisture, or to facilitate the approved postmining land

use. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. The outslope between terrace benches shall not exceed 2h:lv (fifty (50) percent) or such a lesser slope as may be required by the cabinet to ensure stability or minimize erosion. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope. This ditch shall route runoff to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:lv (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved postmining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion.

(d) Impoundments shall not be allowed on the completed fill.

(e) Excess spoil that is acid-forming, toxic-forming, or combustible may be placed in excess spoil fills provided that it is disposed of in accordance with 405 KAR 18:060 and 405 KAR 18:190, Section 3 and provided further that the disposal plan to be used is approved by the cabinet as part of the permit application.

(6) Drainage control.

(a) The fill design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability except the cabinet may waive underdrain requirements if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainageways, or wet-weather seeps and because seepage of water due to precipitation will not adversely affect the stability of the fill. In no case, except for head-of-hollow fills with rock-core chimney drains approved pursuant to Section 3 of this regulation, shall surface runoff from above the fill be diverted through or under the fill.

(b) Diversions associated with excess spoil fills and appurtenant structures shall comply with the applicable requirements of 405 KAR 18:080 and shall be designed and maintained to safely pass the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event, except as provided in Sections 2, 3, and 4 of this regulation and where flow from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid-forming, and nontoxic-forming rock; shall be free of coal, clay, and nondurable material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices.

1. The minimum cross-sectional dimensions of the underdrain shall be as specified in Appendix A of this regulation unless the applicant demonstrates in the application, through detailed analyses to the satisfaction of the



cabinet, that alternative cross-sectional dimensions will provide adequate long-term capacity for drainage at the site. In constructing the underdrain, no more than ten (10) percent of the rock shall be less than twelve (12) inches in size and no single rock shall be larger than twenty-five (25) percent of the width of the segment of the underdrain in which the rock is located.

2. Underdrains shall be constructed of durable rock that meets the durability requirements of Section 4(2)(a)2 of this regulation with the exception that, for shale material, the minimum SDI value necessary to demonstrate sufficient durability for underdrain material shall be ninety-five (95).

3. Adequate samples shall be collected at sufficient geographic and stratigraphic locations and shall be tested and analyzed pursuant to this paragraph to determine, to the satisfaction of the cabinet, the characteristics of all variations of materials to be used in the underdrains. The results of such tests and analyses shall be provided in the permit application.

4. Upon the request of the cabinet, the permittee shall, under the direction of a qualified, registered professional engineer, obtain adequate samples from the underdrain or other locations as necessary to demonstrate, to the satisfaction of the cabinet, compliance with this paragraph. Such samples shall be tested by a qualified laboratory and the results of such testing shall be analyzed by the qualified, registered professional engineer. The obtaining of samples, the testing, and the analyses shall be in the detail, scope, and time frame required by the cabinet to demonstrate, to the satisfaction of the cabinet, compliance with this paragraph. The results of such analyses shall be certified by the qualified, registered professional engineer under whose direction the samples were obtained and tested, and the results of the testing and the results of the analyses shall be submitted immediately to the department's appropriate regional office. The results of the testing and the results of analyses, or copies thereof, shall be reviewed by the qualified, registered professional engineer or specialist performing the inspections pursuant to Section 1(8) of this regulation and shall be included in the certified report immediately following the analyses.

(d) In lieu of the rock underdrain requirements of paragraph (c) of this subsection, perforated pipe underdrains may be approved by the cabinet on a case-by-case basis; however, perforated pipe underdrains shall not be approved for fills of greater than 250,000 cubic yards volume nor where failure of the fill could result in blockage of a stream or significant damage to the health or safety of the public. Perforated pipe underdrains shall be corrosion resistant; shall have characteristics consistent with the long-term life of the fill; shall be designed and constructed using current, prudent engineering practices; shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area; and shall be protected from clogging and contamination by

a filter system designed and constructed to ensure long-term functioning of the perforated pipe underdrain using current, prudent engineering practices.

(7) Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(8) Inspections. A qualified, registered professional engineer, or other qualified professional specialist under the direction of a professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(a) Inspections of the fill site shall be made during critical construction periods as necessary to ensure compliance with this regulation. Critical construction periods shall include at a minimum: foundation preparation including the removal of all organic material and topsoil; placement of underdrains and protective filter systems; installation of final surface drainage systems; completion of the final grading; and completion of the initial revegetating of the completed fill. In addition to the above, inspections of the fill site shall be made, beginning at the initial site-preparation phase of construction, at least once every three (3) months throughout construction of the fill, including during placement and compaction of fill materials.

(b) The qualified, registered professional engineer shall provide a certified report to the department's appropriate regional office within two (2) weeks after each inspection that the fill has been or is being constructed and maintained as designed and in accordance with the approved plan and this regulation. The report shall address appearances of instability, structural weakness, and other hazardous conditions.

(c) 1. The certified reports on the drainage system and protective filter shall include color photographs taken during and after construction of the underdrain and protective filter but before the drainage system is covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

2. For situations in which excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials in accordance with Section 4 of this regulation, color photographs shall be taken of the underdrain as the underdrain system is being formed.

3. The photographs accompanying each certified report shall be taken in adequate size and number and with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(d) A copy of each inspection report shall be retained at or near the mine site.

(9) Underground disposal. Excess spoil may be



disposed of in underground mine workings but only in accordance with a plan approved by the cabinet and MSHA in accordance with the requirements for underground disposal of coal processing waste under 405 KAR 8:040, Section 27.

[(1) Underground development waste and spoil not required for compliance with 405 KAR 18:190 shall be transported to and placed in designated disposal areas within a permit area in a manner approved by the cabinet. The material shall be placed in a controlled manner to ensure:]

[(a) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the requirements of 405 KAR 18:070; and]

[(b) Stability of the fill.]

[(2) The fill shall be designed and certified by a registered professional engineer and approved by the cabinet.]

[(3) Vegetative and organic materials shall, either progressively or in a single operation, be removed from the disposal area and the topsoil shall be removed, segregated and stored or replaced in accordance with 405 KAR 18:050. If approved by the cabinet, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.]

[(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of 405 KAR 18:080, Section 1. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.]

[(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the cabinet. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.]

[(6) The fill materials shall be transported and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.5.]

[(7) The final configuration of the fill must be suitable for reclamation and revegetation compatible with the natural surroundings and suitable for the proposed postmining land uses approved in accordance with 405 KAR 18:220; except that no impoundments shall be allowed on the completed fill, and no depressions shall be allowed on the completed fill unless they are determined by the cabinet to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved postmining land use.]

[(8) Terraces may be utilized to control erosion and enhance stability if approved by the cabinet consistent with 405 KAR 16:190, Section 2(3) except that the safety factor shall be 1.5 and the twenty (20) feet maximum terrace width shall not apply.]

[(9) Where the toe of the spoil rests on a downslope or other area, where the natural land slope exceeds 1v:2.8h (thirty-six (36) percent) or such lesser slope as may be designated by the cabinet based on local conditions, keyway cuts

(excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Stability analyses shall be performed in accordance with 405 KAR 8:040, Section 28 to determine the size of the rock toe buttresses or keyway cuts.]

[(10) The fill shall be inspected for stability by a qualified registered professional engineer or other qualified person under the direct supervision of the responsible registered professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction, and during the following critical construction periods: removal of organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials, and revegetation. The responsible registered professional engineer shall certify to the cabinet within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the cabinet. A copy of the report shall be retained at the mine site.]

[(10)(a) [(11)] If approved by the cabinet, based on a demonstration to the satisfaction of the cabinet in the application that such disposal will have no adverse effect upon the stability of the fill, and if included as a condition of the permit, excess spoil [and underground development waste] may be disposed of in coal mine waste refuse piles [processing waste banks] in accordance with 405 KAR 16:140 or 405 KAR 18:140.

(b) Coal processing waste [However, coal processing wastes] shall not be disposed of in [head-of-hollow or valley] fills designed and approved for excess spoil, [or underground development waste, and may only be disposed of in other fills designed and approved for underground development waste or excess spoil if such coal processing waste is;] Underground development waste may be disposed of in excess spoil fills if such disposal is specifically approved by the cabinet and is made a condition of the permit and if such underground development waste is:

1. [(a)] Placed in accordance with 405 KAR 18:140, Section 4;

2. [(b)] Demonstrated to be nontoxic-forming [non-toxic] and nonacid-forming; and

3. [(c)] Demonstrated to have no adverse effect upon the stability of the fill.

[(11) Spoil resulting from face-up operations for underground coal mine development may be placed in steep slope areas on the downslope at the drift entry as part of a cut and fill structure if the structure is less than 400 feet in length (as measured generally parallel to the mine bench) and if the fill is designed and constructed in accordance with the requirements of this section.

[(12) If the disposal area contains springs, natural or manmade watercourses, or wet weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.]

[(13) The foundation and abutments of the fill

shall be stable under all conditions of construction and operation. Sufficient foundation investigation, including any necessary laboratory testing of foundation materials, shall be performed in order to determine the stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.]

[(14) Underground development waste and excess spoil may be returned to underground workings only in accordance with the disposal plans submitted under 405 KAR 8:040, Section 27 and approved by the cabinet and MSHA.]

Section 2. Valley Fills and Head-of-hollow Fills. Valley fills and head-of-hollow fills shall meet all of the requirements of Section 1 of this regulation and the additional requirements of this section, except as provided in Sections 3 and 4 of this regulation.

[(1) The fill shall be designed to attain a long term static factor of safety of 1.5, based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.]

[(1) [(2)] A subdrainage system for the fill shall be constructed in accordance with Section 1(6)(c) or (d) of this regulation and with the following:

[(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:]

(a) [1.] Be installed along the natural drainageways [system];

(b) [2.] Extend from the toe to the head of the fill; and

(c) [3.] Contain lateral drains to each area of potential drainage or seepage.

[(b) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.]

[(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A of this regulation unless the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that a smaller drain will provide adequate long term capacity for drainage at the site.]

[(d) Underdrains shall consist of nondegradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay, or shale. However, alternative materials may be used if the applicant demonstrates through detailed engineering analysis to the satisfaction of the cabinet that the alternative materials will provide adequate long-term capacity for drainage at the site. Such alternative materials shall be nondegradable, and non-acid or toxic-forming.]

[(3) Underground development waste and excess spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the cabinet, in lifts no greater

than four (4) feet.]

[(a) The cabinet may require lifts of less than four (4) feet in order to:]

[1. Achieve the densities designed to ensure mass stability;]

[2. Prevent mass movement;]

[3. Avoid contamination of the rock underdrain or rock-core; and]

[4. Prevent formation of voids.]

[(b) The cabinet may approve lifts of greater than four (4) feet, or alternate methods of controlled placement, if the permittee demonstrates through appropriate engineering analysis in the permit application to the cabinet's satisfaction that the provisions of subparagraphs 1 through 4 of paragraph (a) of this subsection will be met.]

(2) [(4)] Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a [the] 100 year, twenty-four (24) hour precipitation event or larger event specified by the cabinet. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100 year, twenty-four (24) hour precipitation event. Diversion designs shall comply with the applicable requirements of 405 KAR 18:080[, Section 1(6)].

[(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.]

[(6) Drainage shall not be directed over the outslope of the fill.]

[(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The cabinet may require a flatter slope.]

Section 3. Rock-Core Chimney Drains. (1) A rock-core chimney drain may be used in a head-of-hollow fill [utilized as provided in this section] instead of the subdrain and surface runoff diversion system normally required, as long as the fill is not located in an area containing an intermittent or perennial stream. A rock-core chimney drain may be used in a valley fill if the fill volume does not exceed 250,000 cubic yards of material and if upstream drainage is diverted around the fill. [under Section 2(2) and (4), for:]

[(a) All head-of-hollow fills; and]

[(b) All valley fills placed near the elevation of the face-up area which do not exceed 250,000 cubic yards in volume.]

(2) The rock-core chimney drain shall be designed and constructed as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock-core to each area of potential drainage or seepage in the disposal area. The underdrain system and the rock-core shall be designed and constructed to carry, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area. Rocks used

in the rock-core and underdrains shall meet the requirements of Section 1(6)(c) [2(2)] of this regulation.

(b) A filter system to ensure the proper long-term functioning of the rock-core shall be designed and constructed using current, prudent engineering practices [standard geotechnical engineering methods].

(c) 1. The grading of the fill surface shall [may] drain runoff [from the fill surface] away from the outslope of the fill and may drain runoff toward the rock-core. In no case, however, shall intermittent or perennial streams be diverted into the rock-core. The maximum slope of the top of the fill shall be 33h:1v [1v:33h] (three (3) percent). Terraces on the fill shall be graded with a three (3) to five (5) percent slope toward the fill and a one (1) percent slope toward the rock-core.

2. [Notwithstanding the requirement of Section 1(7), prohibiting depressions and impoundments,] A drainage pocket may be maintained at the head of the fill during and after construction to intercept and collect surface runoff [from the fill surface] and to discharge the runoff through or over the rock drain, if it is demonstrated to the satisfaction of the cabinet in the application and certified by a qualified, registered professional engineer that the stability of the fill will [is] not be impaired. [The drainage pocket and rock-core shall not be used to intercept and discharge runoff from the drainage area upstream from the fill.] In no case shall this drainage pocket have a potential for impounding more than 10,000 cubic feet of water. [Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock-core.]

(3) The drainage control system shall be capable of safely passing the runoff from a 100 year, twenty-four (24) hour precipitation event or a larger event if specified by the cabinet.

Section 4. End-dumped fills [Hard Rock Spoil]. The cabinet may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts provided the following conditions are met:

(1) Except as provided in this section, the requirements of Sections 1 and 2 of this regulation are met.

(2)(a) 1. The excess spoil is nontoxic-forming and nonacid-forming and consists of at least eighty (80) percent, by volume, of durable rock that is free of coal, clay, and nondurable material.

2. Durable rock means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79). The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon

correlation of results with Kentucky Method 64-513-79.

3. Adequate samples shall be collected at sufficient geographic and stratigraphic locations and shall be tested and analyzed pursuant to this subsection to determine, to the satisfaction of the cabinet, the characteristics of all variations of materials to be placed in the end-dumped fill. The results of such tests and analyses shall be provided in the permit application.

(b) All noncemented and poorly cemented shale, clay, soil, and nondurable excess spoil materials disposed of in the fill shall be distributed, to the satisfaction of the cabinet, within the fill by selective dumping or other adequate methods of placement to avoid localized concentrations of nondurable materials which would adversely affect the stability or internal drainage of the fill.

(3) The fill shall be designed and constructed to attain a minimum long-term static safety factor of 1.5 and a minimum earthquake safety factor of 1.1.

(4) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials provided that the resulting underdrain system is capable of carrying, away from the fill, the maximum anticipated seepage of water due to precipitation and the maximum anticipated seepage and discharge from seeps and springs in the foundation of the disposal area and provided that the other requirements for drainage control are met. For situations (such as the dumping of fill material from an insufficient height or on an insufficient slope) in which, in the judgment of the cabinet, the natural segregation of dumped materials will not form an adequate underdrain system, the underdrain system shall be separately constructed in accordance with Section 1(6) of this regulation.

(5) Upon the request of the cabinet, the permittee shall, under the direction of a qualified, registered professional engineer, obtain adequate samples from the fill or other locations as necessary to demonstrate, to the satisfaction of the cabinet, compliance with this section. Such samples shall be tested by a qualified laboratory and the results of such testing shall be analyzed by the qualified, registered professional engineer. The obtaining of samples, the testing, and the analyses shall be in the detail, scope, and time frame required by the cabinet to demonstrate, to the satisfaction of the cabinet, compliance with this section. The results of such analyses shall be certified by the qualified, registered professional engineer under whose direction the samples were obtained and tested, and the results of the testing and the results of analyses shall be submitted immediately to the department's appropriate regional office. The results of the testing and the results of analyses, or copies thereof, shall be reviewed by the qualified, registered professional engineer or specialist performing the inspections pursuant to Section 1(8) of this regulation and shall be included in the certified report immediately following the analyses.

(6) The surface drainage control system shall be designed and constructed in accordance with Sections 1 and 2 of this regulation except that

in all situations surface water runoff from areas adjacent to and above the fill and any appurtenant structures shall not flow onto the fill and shall be diverted into stabilized diversion channels designed to meet the applicable requirements of 405 KAR 18:080 and to safely pass the runoff from a 100 year, twenty-four (24) hour precipitation event.

[(1) In lieu of the requirements of Section 2 of this regulation and of the requirement in Section 1(6) of this regulation to place spoil in horizontal lifts in a controlled manner and for concurrent compaction, the cabinet may approve alternate methods for disposal of hard rock spoil, which may include fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and all other requirements of Section 1 of this regulation, including the factor of safety, are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock waste or spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the cabinet.]

[(2) Waste or spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.]

[(a) The method of waste spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.]

[(b) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials will comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the cabinet.]

[(3) Stability analyses shall be made by the registered professional engineer.]

[(a) Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including necessary borings, and laboratory tests.]

[(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety specified in Appendix B of this regulation.]

[(4) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.]

[(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on appropriate records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.]

[(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.]

[(c) When necessary to ensure proper long-term functioning of the internal drainage system, the internal drain shall be protected by a properly designed filter system.]

[(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 18:080, Section 1(6).]

[(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.]

[(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will safely pass a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 18:080, Section 1(6).]

[(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved post-mining land use plan. Terraces shall meet the following requirements:]

[(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).]

[(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.]

[(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.]

Section 5. Disposal on Existing Benches. (1) If [When] approved by the cabinet, [underground development waste and] excess spoil may be disposed of on pre-existing benches that have not been reclaimed to the standards of this Title and for which there is no continuing responsibility to reclaim to such standards, provided that all of the requirements set forth in Sections 1(1), (2)(a), (4) through (8) and (10) of this regulation and the requirements of this section are met [created by surface coal mining operations conducted prior to May 3, 1978].

(a) Excess spoil shall be placed only on the solid portion of the pre-existing bench. [The applicant shall demonstrate to the satisfaction of the cabinet that the underground development waste and excess spoil to be placed on the existing benches is in excess of the underground development waste and spoil necessary to eliminate the highwall and return to approximate original contour on the active mining bench.]

[(b) All areas to be affected shall be included in the permit area.]

[(c) The underground development waste and excess spoil shall be placed only on solid portions of the existing bench, and shall be placed in a controlled manner to eliminate as much of the existing highwall as practicable.]

(b) [(d)] The [underground development waste and] excess spoil shall be placed in horizontal lifts, concurrently compacted as necessary to ensure mass stability and prevent mass movement with a long-term static safety factor of 1.3, and graded to allow surface and subsurface drainage compatible with the natural surroundings. The final graded slopes shall not exceed 2h:1v [1v:2h] (fifty (50) percent) except [that] the cabinet may approve steeper slopes which provide a minimum long-term static safety factor of 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining.

(c) The pre-existing bench shall be backfilled and graded to:

1. Achieve the most moderate slope possible which does not exceed the angle of repose; and

2. Eliminate the highwall to the maximum extent technically practicable.

(2) Gravity transport of [underground development waste and] excess spoil.

(a) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport may be approved by the cabinet if the applicant identifies the gravity transport courses on a map in the permit application and the applicant demonstrates, to the satisfaction of the cabinet, that the plan for gravity transport will minimize hazards to the environment and to the health and safety of the public and that the plan ensures that damage between benches and downslope of the pre-existing bench will be minimized if spoil moves in an unapproved manner during activities related to the disposal of the spoil or after placement of the spoil on the pre-existing bench. [When approved by the cabinet, excess spoil may be moved by controlled gravity transport from an actively mined upper bench to an existing lower bench, if the highwall of the lower bench intersects the upper bench with no natural slope between them other than the natural slope of the undisturbed natural barrier required by 405 KAR 18:010.]

(b) The disposal of material in accordance with this subsection shall comply with the following: [The gravity transport points shall be determined by the applicant on a site specific basis and approved by the cabinet to minimize hazards to health and safety and to ensure that damage will be minimized if the underground development waste and excess spoil should accidentally move off the existing bench to the downslope.]

1. [(c)] All [underground development waste and] excess spoil placed on the lower bench by gravity transport, including the [underground development waste and excess] spoil immediately below the points of gravity transport, shall be rehandled and placed as required under subsection (1) of this section. [Underground development waste and excess] Spoil remaining on the lower bench from prior operations need not be rehandled unless such rehandling is [except when] necessary to ensure stability of the fill.

2. [(d)] A safety berm shall be constructed on the solid portion of the lower bench prior to gravity transport of the [underground development waste and] excess spoil to the lower bench. The safety berm shall be of sufficient height, width, and length to prevent the gravity transported [underground development waste and excess] spoil from moving off the lower bench to

the downslope. If [Where] there is insufficient material from previous operations [remaining] on the lower bench to construct the safety berm, only that amount of [underground development waste and] excess spoil necessary for construction of the safety berm may be gravity transported to the lower bench prior to construction of the safety berm. The safety berm shall be removed during final grading operations.

3. Excess spoil shall not be allowed on the downslope below the upper bench and above the highwall of the pre-existing bench except on designated gravity transport courses properly prepared according to 405 KAR 18:050. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport courses between the two (2) benches and each transport course shall be reclaimed in accordance with the applicable requirements of this chapter.

Section 6. Disposal of Underground Development Waste. Underground development waste shall be disposed of in accordance with the coal mine waste requirements of 405 KAR 18:140 and 405 KAR 18:160 as applicable.

Section 7. Applicability of Amendments to this Regulation. (1) Any excess spoil fill on which the final grading is conducted prior to the effective date of amendments to this regulation shall, in lieu of the requirements of the amendments, comply with the requirements which preceded the amendments, the approved permit application, and the conditions of permit issuance.

(2) Any excess spoil fill in a construction phase beyond initial site preparation prior to ninety (90) days following the effective date of amendments to this regulation shall, beginning on the effective date of these amendments, comply with all provisions of this regulation as amended, except that for situations in which any requirement of an amendment to this regulation would affect the design and construction of the fill to the extent that the design plans previously approved in the permit would have to be revised, such requirement shall not apply and the fill may be constructed in accordance with the previously approved design plans. However, the permittee may, if desired, apply for a permit revision in accordance with 405 KAR 8:010, Section 20 to modify the design of the fill to comply with the amendments to this regulation.

(3) Any excess spoil fill for which construction begins on or after the ninetieth day following the effective date of amendments to this regulation shall comply with all provisions of this regulation as amended.

(4) With regard to any excess spoil fill approved in a permit issued prior to the effective date of these amendments, the permittee shall not be required to have slake durability index tests conducted solely for the purpose of including the results of such tests in the permit application; however, the permittee shall have such tests performed if required by the cabinet under Section 1(6)(c)4 or Section 4(5) of this regulation. This exemption shall not apply to excess spoil fills for which construction begins on or after one (1) year following the effective date of these amendments.

## Appendix A of 405 KAR 18:130

Minimum Drain Segment Cross-Sectional Dimensions [Size]

<u>Total cumulative volume [amount] of fill material to be drained by segment</u>	<u>Predominant type of fill material</u>	<u>Minimum size of drain segment in feet</u>	
		<u>Width</u>	<u>Height</u>
Less than 1,000,000 yd <sup>3</sup>			
[yd <sup>3</sup> .....]	Sandstone	10	4
[Do.....]	Shale	16	8
More than 1,000,000 yd <sup>3</sup>			
[yd <sup>3</sup> .....]	Sandstone	16	8
[Do.....]	Shale	16	16

The underdrain may be divided into segments for purposes of determining required dimensions of the individual drain segments. Each segment will drain the volume of fill overlying the segment plus carry the water drained to the segment from areas of the fill located upstream of the segment. Where the cumulative volume of the fill material to be drained by a segment is less than 1,000,000 yd<sup>3</sup>, the smaller dimension may be used.

[Appendix B of 405 KAR 18:130]

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1]

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 14, 1985 at 2:30 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment and its counterpart in Chapter 16 affect approximately 1700 surface coal mining operations and the general public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: These amendments contain numerous changes, many of which merely serve to clarify the existing requirements; but several result in substantive changes. Some of the changes will result in savings to the industry

for certain types of fills. Some of the changes related to the design of fills, testing of materials, and inspection of construction will mean some additional costs. However, these changes should not significantly affect the construction cost which is the major factor in the overall costs related to excess spoil fills.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There is a new requirement to photograph underdrains during construction.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. These requirements must apply equally to all excess spoil fills subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

**NATURAL RESOURCES AND ENVIRONMENTAL  
PROTECTION CABINET  
Department for Surface Mining Reclamation  
and Enforcement  
(Proposed Amendment)**

**405 KAR 18:170. Stabilization of surface areas  
[Air resources protection].**

RELATES TO: KRS 224.033, 350.020, 350.151, 350.465

PURSUANT TO: KRS Chapter 13A [13.082], 350.028, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for the protection of people, [and] property, land, water, [and other] natural resources, and aesthetic values during underground mining activities and for the restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for the stabilization of surface areas [control and monitoring of air pollution from surface operations of underground mining activities,] with specific measures for the control of

fugitive dust.

Section 1. Stabilization of Surface Areas. All exposed surface areas shall be protected and stabilized to effectively control and limit erosion and air pollution attendant to erosion (fugitive dust). [Fugitive Dust Control. Each permittee shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining, and reclamation operations.]

Section 2. Control Measures. The fugitive dust control measures to be used shall include, as necessary, but not be limited to:

- (1) Periodic watering of unpaved roads;
- (2) Chemical stabilization of unpaved roads with proper application of non-toxic soil cements or dust palliatives;
- (3) Paving of roads;
- (4) Prompt removal of coal, rock, soil, and other dust-forming debris from roads and frequent scraping of and compaction of unpaved roads to stabilize the road surfaces;
- (5) Revegetating [Revegetation], mulching, or otherwise stabilizing the surfaces of all areas adjoining roads that are sources of fugitive dust;
- (6) Restricting the travel of vehicles on areas other than established roads;
- (7) Minimizing the area of disturbed land;
- (8) Prompt revegetation or other stabilization of disturbed lands; and
- (9) Planting of special windbreak vegetation at critical points in the permit area.

[Section 3. Additional Measures. Where the cabinet determines the application of fugitive dust control measures listed in Section 2 is inadequate, the cabinet may require additional measures and practices as necessary.]

[Section 4. Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air quality monitoring plan if required under 405 KAR 8:040, Section 35 and approved by the cabinet.]

CHARLOTTE E. BALDWIN, Secretary  
APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment and its counterpart in Chapter 16 affect approximately 1700 surface coal mining and reclamation operations and the general

public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
- (b) Reporting and paperwork requirements: None
- (2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation must apply equally to all surface coal mining and reclamation operations subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Proposed Amendment)

#### 405 KAR 20:030. Auger mining.

RELATES TO: KRS 350.010, 350.028, 350.090, 350.410, 350.420, 350.465

PURSUANT TO: KRS Chapter 13A. [13.082], 350.028, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards for surface coal mining operations, including auger mining. This regulation sets forth additional performance standards for auger mining [associated with other surface mining activities]. This regulation specifies certain distances between auger holes, criteria for plugging auger holes, and situations in which [criteria for when] an auger hole need not be plugged.

Section 1. Additional Performance Standards.

(1) All [Any] auger mining operations [associated with surface mining activities] shall be conducted so as to maximize the utilization and conservation of coal in accordance with 405 KAR 16:010 and shall be planned and conducted to maximize recoverability



of mineral reserves remaining after the mining and reclamation activities are completed. Each permittee who conducts auger mining operations shall leave areas of undisturbed coal to provide access for removal of coal [those] reserves by future underground mining activities unless the cabinet determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The cabinet shall make such a determination only upon presentation of appropriate technical evidence by the permittee. Except where the applicant designates specific areas where the applicant plans to develop future entryways for underground mining, undisturbed areas of coal shall be left in unmined sections which:

(a) Are a minimum of 250 feet wide at any point between each group of auger openings to the full depth of the auger hole;

(b) Are no more than 2,500 feet apart measured from the center of one (1) section to the center of the next section unless a greater distance is set forth in the permit application under 405 KAR 8:050, Section 2; and

(c) For multiple seam mining, [shall] have a width of at least 250 feet plus fifty (50) feet for each subjacent workable coal seam. The centers of all unmined sections shall be aligned vertically.

(2) No auger hole shall be made closer than 500 feet in horizontal distance to any abandoned or active underground mine workings except as approved in accordance with 405 KAR 16:010, Section 3.

(3) In order to prevent pollution of surface and ground water and to reduce fire hazards, each auger hole, except as provided in subsection (4) of this section, shall be plugged so as to prevent the discharge of water from the hole and access of air to the coal as follows:

(a) Each auger hole discharging water containing toxic-forming or acid-forming material shall be plugged within seventy-two (72) hours after completion by backfilling and compacting noncombustible and impervious material into the hole to a depth sufficient to form a watertight seal. All [or the] discharges shall be treated as necessary [commencing within seventy-two (72) hours after completion] to meet the requirements of 405 KAR 16:070, Section 1(1)(g) until the hole is properly sealed; and

(b) Each auger hole not discharging water containing acid-forming or toxic-forming material shall be sealed as in paragraph (a) of this subsection to close the opening within thirty (30) days following completion.

(4) An auger hole need not be plugged if the cabinet finds that:

(a) Impoundment of the water which would result from plugging the hole may create a hazard to the environment or public health or safety; [and]

(b) Drainage from the auger hole will not pose a threat of pollution to surface water and will comply with the requirements of 405 KAR 16:060, Section 1 and 405 KAR 16:070; and [.]

(c) Drainage from the auger hole will not result in instability of the backfill.

(5) The cabinet shall prohibit auger mining if it determines that:

(a) Adverse water quality impacts cannot be prevented or corrected;

(b) Fill stability cannot be achieved; or

(c) The prohibition is necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources. [; or]

[(d) Subsidence resulting from auger mining may disturb or damage powerlines, pipelines, buildings, or other facilities.]

(6) Auger mining shall comply with the performance standards for subsidence at 405 KAR 18:210.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 28, 1985 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will affect those surface coal mining operations that conduct augering operations and the general public that lives in the coal field regions.

(a) Direct and indirect costs or savings to those affected:

1. First year: There is a new requirement that auger operations comply with the subsidence control requirements. This will mean additional costs for reclamation of sites where the augering induces subsidence.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation must

apply equally to all surface coal mining and reclamation operations subject to Title 405, Chapters 7-24.

A fiscal note is not required for this regulation because it will have no impact on local government.

**TRANSPORTATION CABINET**  
**Office of Personnel Management**  
**(Proposed Amendment)**

**600 KAR 1:040. Separations and disciplinary procedures.**

RELATES TO: KRS Chapter 18A, 174.080

PURSUANT TO: KRS 13A.100, 174.080

NECESSITY AND FUNCTION: KRS 174.080 allows the Secretary of the Transportation Cabinet to promulgate administrative regulations. KRS 13A.100 requires any administrative body which is empowered to promulgate administrative regulations to prescribe the disciplinary procedures within the jurisdiction of the administrative body. This regulation is necessary to define and prescribe such disciplinary procedure within the Transportation Cabinet.

Section 1. Authority to Approve Separation and Disciplinary Action. The Secretary of the Transportation Cabinet has delegated the authority for the approval of employee separation and discipline as follows:

(1) All employees. The approval of the Executive Director, Office of Personnel Management, must be obtained prior to the separation by layoff, dismissal, disciplinary fine or letter of reprimand being imposed against any employee of this cabinet.

(2) District office employees. After the required approval has been obtained, the Chief Highway District Engineers are authorized to prepare and sign the required letter of notification advising the employee of his suspension, dismissal, layoff or disciplinary fine. The letter will then be delivered to the employee. The Chief Highway District Engineer and the Executive Director, Office of Personnel Management, are authorized to suspend employees with status under the Merit System for a specified period of time, provided that no other disciplinary action is taken regarding the act committed by the employee providing the requirements of this regulation are complied with. The Chief Highway District Engineer and the Executive Director, Office of Personnel Management, may suspend employees pending further determination as to the appropriate action to be taken against the employee provided the provisions of this regulation are complied with.

(3) Central office. In the case of a disciplinary measure against an employee in the Central Office, the division or office will prepare the required letter of notification advising the employee of his reprimand, suspension, dismissal, layoff or disciplinary fine for the signature of the Executive Director of the Office of Personnel Management. After the signature has been obtained, the letter will be returned to the division or office for delivery to the employee.

Section 2. Responsibility of the Immediate Supervisor. The immediate supervisor will report employee delinquency, misconduct or incompetency in accordance with procedures established in this regulation, to the Chief Highway District Engineer, office head or division director as appropriate. The supervisor who fails to report employees who violate the policies and procedures of this cabinet or the provisions of the personnel laws and regulations because of friendship or other personal reasons, or because he does not agree with the disposition of certain similar cases, is evading his responsibility and may be disciplined.

Section 3. Separation and Disciplinary Procedures. (1) Infractions. Employees involved in trivial infractions should usually be orally reprimanded by their immediate supervisor at the time the infraction occurs, and in private. If the offense continues or the employee commits an act warranting reprimand, suspension, dismissal or a disciplinary fine, the immediate supervisor shall complete, in triplicate, an Employee Disciplinary Report. The original shall be forwarded to the Chief Highway District Engineer, office head or division director, with the immediate supervisor's recommendation as to the punitive action to be taken. The duplicate copy of the Employee Disciplinary Report will be given to the employee. The third copy will be sent to the Executive Director, Office of Personnel Management, to be filed in the employee's personnel folder. The report shall be specific as to the time, place and persons by name, involved in the violation and a specific description of the unlawful act. In emergency situations, the immediate supervisor will contact the Chief Highway District Engineer, office head or division director or their designated representative for [of] instructions by the most expeditious means available. Emergency situations are defined as those situations where the employee's action, attitude or condition may endanger the public, public property or personnel, or property of the Commonwealth, and action must be taken immediately to remove the employee from the work site.

(2) Investigations. The Chief Highway District Engineer, office head or division director may, upon advice that an employee under his jurisdiction has violated the policies or procedures of this cabinet or provisions of the personnel laws and rules, designate an individual to investigate the alleged violation. Such investigator will prepare a written report with his opinion as to the innocence or guilt of the employee. Upon receipt of the report and provided the Chief Highway District Engineer, office head or division director believes the employee should be fined, suspended or dismissed, a copy of the report with their recommendations will be submitted to the Executive Director, Office of Personnel Management, for approval.

Section 4. Layoffs. The Transportation Cabinet must prepare and submit a layoff plan to the Commissioner of Personnel for approval prior to separation by layoff. The Office of Personnel Management is responsible for coordinating the preparation of the layoff plan and will submit the plan to the Department of Personnel for

approval. Steps to be taken after approval has been obtained are listed below:

(1) The Transportation Cabinet may lay off an employee in the classified service whenever it is deemed necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. The employee shall be notified of the effective date of the layoff and shall be given written notice of the reason for the layoff and of his right to appeal.

(2) Seniority, performance appraisals, conduct, qualifications and type of appointment shall be considered in determining the order of layoffs in a manner prescribed or approved by the Commissioner of Personnel. No status employee is to be separated by layoff while there are provisional, temporary, emergency, or probationary employees serving in the agency in the same class in the same locality.

(3) The Transportation Cabinet and Personnel Department shall attempt to place the employee in another position for which the employee is qualified.

Section 5. Dismissals. (1) The Transportation Cabinet may remove any employee with status only for cause after furnishing the employee and the Commissioner of Personnel with a written statement of the specific reasons for dismissal. Such reasons shall be specific as to the statutory and/or regulatory violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Specificity shall be determined by the nature of the violation and the time period over which the violation occurred. The notification of dismissal shall either be hand-delivered to the employee at least ten (10) working days prior to the effective date of dismissal, or sent to him by certified mail at least thirteen (13) working days prior to the effective date of dismissal.

(2) Notifications of dismissal shall inform the employee that he has ten (10) working days, not including the date the notice is received, to reply thereto in writing or upon request to appear personally with counsel and reply to the Secretary of Transportation or his deputy. An employee who desires to respond to the charges in writing or requests to appear personally will be advised to submit his written response or request to appear to the Executive Director, Office of Personnel Management. Such reply or request by employee shall not operate to stay the statutory time period for appeal to the Kentucky Personnel Board. All written responses to the charges or requests to appear personally will be responded to by the Executive Director, Office of Personnel Management, on behalf of the Secretary, Transportation Cabinet.

(3) An employee with status may appeal his dismissal to the Kentucky Personnel Board.

(4) A dismissed employee may be required to forfeit all annual leave.

(5) Any employee who has been dismissed for cause or who has resigned while charges for dismissal for cause were pending and who seeks further employment with the state shall not be certified to the agency from which separated unless the agency requests such certification.

Section 6. Separation During Probation Period. An employee may be separated without the right

of appeal at any time during the probationary period.

Section 7. Resignation. An employee who desires to terminate his service with the state shall submit a written resignation to the Chief Highway District Engineer, office head or division director. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the resignation and be filed in his service record in the cabinet. Failure of an employee to give fourteen (14) calendar days notice with resignation may result in forfeiture of accrued annual leave. A written notice of resignation signed by the employee or the party accepting his resignation is required. If no written notice of resignation is submitted disciplinary action will be taken.

Section 8. Retirement. If an employee with status is retired, he is considered as separated without prejudice and does not have the right of appeal.

Section 9. Suspensions. The Transportation Cabinet, through the appointing authority, may suspend any employee without pay or other compensation as punishment for disciplinary cause. The appointing authority must provide the employee with written notice of the suspension stating the reasons therefor, a copy of which shall be sent to the Commissioner of Personnel and Executive Director of the Personnel Board. In the case of an employee with status, such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Such a suspension shall not exceed thirty (30) working days. Any employee with status may appeal his suspension.

Section 10. Disciplinary Fines. The Transportation Cabinet may impose as a disciplinary measure a fine of not more than ten (10) days' pay to be computed on the basis of the employee's current salary. Disciplinary fines may not exceed ten (10) days' pay for each occurrence. The employee shall be notified in writing by the cabinet of the reasons for the action, a copy of which shall be sent to the Commissioner of Personnel. In the case of an employee with status, such reasons shall be specific as to the statutory and/or regulatory violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. An employee with status may appeal the action. The effective date of a disciplinary fine shall be deemed to be the date the employee receives the notification required by this section.

Section 11. Written Reprimands. The Transportation Cabinet may give an employee a written reprimand as a single disciplinary measure or as a preliminary measure. The approval of the Executive Director, Office of Personnel Management, must be obtained prior to giving an employee a letter of reprimand. A copy of the written reprimand shall be placed in the employee's personnel file in the cabinet and a

copy shall be given to the employee. The employee shall be given the opportunity to reply in writing to the written reprimand and to include this reply in his personnel file with the written reprimand. The employee shall be informed of his right to reply at the time the written reprimand is given. A written reprimand, in and of itself, is not an appealable penalization and is not a basis for appeal. If an employee has not been charged with or has pending other disciplinary measures, the written reprimand may be removed from his personnel file after three (3) years from the date of the written reprimand.

Section 12. Separation and Disciplinary Actions for Non-Merit Employees. Employees appointed as seasonal, temporary, emergency or in other non-merit positions may be terminated without the right of appeal at any time while under such an appointment as they do not have status under the Merit System. This section does not pertain to employees who are serving their probationary period. In the event it becomes necessary to either suspend or terminate an employee serving under one of these appointments, the employee will be given a letter advising him of the effective date of the suspension or termination. Approval of the Executive Director, Office of Personnel Management, is required prior to effectuating the penalization. The letter of notification to the employee shall be prepared and signed by the Chief Highway District Engineer or the Executive Director of the Office of Personnel Management. Any non-merit employee dismissed for cause shall have a right of appeal under 101 KAR 1:230.

FLOYD G. POORE, Secretary

APPROVED BY AGENCY: April 30, 1985

FILED WITH LRC: May 1, 1985 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed amended administrative regulation will be held June 27, 1985 at 8:30 a.m., local prevailing time in the fourth floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must in writing not later than June 22, 1985 so notify: Rusty Cheuvront, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40602.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rusty Cheuvront

(1) Type and number of entities affected: All Transportation Cabinet employees

(a) Direct and indirect costs or savings to those affected: none

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: none

(2) Effects on the promulgating administrative body: none

(a) Direct and indirect costs or savings: none

1. First year: none

2. Continuing costs or savings: none

3. Additional factors increasing or decreasing costs: none

(b) Reporting and paperwork requirements: none

(3) Assessment of anticipated effect on state and local revenues: none

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment required by recent United States Supreme Court Case cited below:

Leave 600 KAR 1:040 without amendment - The transportation Cabinet would risk certain defeat on any appeal of an employee termination because the United States Supreme Court in Cleveland Board of Education v. Loudermill, 53 U.S. L.W. 4306 (March 19, 1985), ruled that a terminated employee's due process rights are violated without an opportunity for that employee to express his "side of the story" prior to the effective date of termination.

There has been confusion among Cabinet managers as to who has the authority to sign letters of reprimand for their employees. This confusion and erroneous action will continue unless this regulation is amended.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: none

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Amendment required in order to comply with Cleveland Board of Education v. Loudermill, 53 U.S. L.W. 4306 (March 19, 1985). By requiring a termination notice to be received by an employee ten working days prior to the effective date of the termination, the employee has an opportunity to take advantage of 101 KAR 1:120, Section 3(2) and 600 KAR 1:040, Section 5(2) prior to the termination. These sections give an employee ten working days to request a hearing before the Secretary or his deputy.

The words "reprimand" are inserted to eliminate any confusion as to who has the authority to sign the letters of reprimand for Cabinet employees.

Tiering:

Was tiering applied? No. All Cabinet employees should be treated the same.

#### TRANSPORTATION CABINET Department of Highways (Proposed Amendment)

603 KAR 2:015. Prequalification for construction; certificate of eligibility.

RELATES TO: KRS 176.130 to 176.220

PURSUANT TO: KRS 174.080, [13.082, 174.050,] 176.140

NECESSITY AND FUNCTION: KRS 176.140 authorizes the Department [Bureau] of Highways to determine the eligibility of bidders for construction contracts with the department [bureau]. This regulation is adopted to provide a method by which such determination may be made.

Section 1. Certificate of Eligibility. (1) All contractors [organizations and individuals] bidding on construction projects and accepting subcontracts on construction projects of the Transportation Cabinet, Department of Highways ("department" hereinafter), [Department of

Transportation, Bureau of Highways.] must be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects [except as provided below]. The certificate shall state the maximum eligibility amount [capacity] and types of work for which the contractor [organizations or individual] is qualified. The department [bureau] reserves the right to waive this requirement on certain projects in connection with the letting of contracts where such requirement is not mandated [covered] by the statutes. Such waiver shall be contained in the notice to contractors and the bid proposal for such projects.

(2) The Commissioner of Highways shall appoint a construction prequalification committee composed of department employees to review each application and make a recommendation to the Commissioner of Highways concerning the eligibility of contractors to bid on department construction contracts.

Section 2. Application for Certificate of Eligibility. A contractor [An organization or individual] desiring to procure a certificate shall submit, on application and financial statement forms provided by the department [Bureau of Highways], information relating to the following:

(1) Ability to perform the types of work for which eligibility is requested.

(2) Construction experience resumes of the principal officers and key personnel of the contractor [organization].

(3) Description of plant and equipment.

(4) Balance sheet and financial statement prepared as of the close of the last fiscal year or to reflect the current financial status of a newly established contractor [organization].

(a) The financial statement of applicants desiring eligibility in excess of \$1,000,000 must be audited and attested by an independent public accountant or certified public accountant who holds a valid registration card from the Kentucky State Board of Accountancy or a registration card in the state in which the principal office of the contractor is located. The audit shall be made in accordance with the generally accepted auditing standards adopted by the membership of the American Institute of Certified Public Accountants. Standard audit forms and procedures shall conform with the institute's recommendations for the audit program of contractors. The accountant shall [will] also comply with the specific instructions relative to the presentation of supporting detail requested by the department [bureau] to determine the amount of net current assets available.

(b) The financial statement of applicants desiring eligibility of \$1,000,000 or less shall be signed by the person preparing the statement and by a principal officer of the contractor [organization].

(5) Other information deemed necessary by the department [bureau] to indicate the applicant's capacity and ability to complete highway construction projects.

Section 3. Method of Computing Maximum Eligibility Amount [Capacity Rating and Maximum Eligibility]. (1) The allowable net current assets as determined from the financial

statement plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary (exclude all policies with other beneficiaries) shall be multiplied by a factor of twelve (12) to establish the net current assets factor. The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor. The equipment factor shall be added to the net current assets factor to determine the [total] maximum capacity factor of the contractor. [The contractor's total eligibility rating shall be finally determined by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the percentage factors below and multiply the total allowable percentage by the total maximum capacity factor.]

(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the following maximum percentages:

(a) Organization and experience - twenty (20) percent;

(b) Plant and equipment - thirty (30) percent;

(c) Performance - fifty (50) percent.

[(2) Rating factors:]

[(a) Organization and experience, twenty (20) percent;]

[(b) Plant and equipment, forty (40) percent;]

[(c) Performance, forty (40) percent.]

(3) The maximum eligibility amount, which is the maximum amount of uncompleted prime contract work permitted at any one time, shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor. A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department and the total value of uncompleted prime contract work charged to the contractor regardless of its location and with whom it may be contracted [uncompleted work permitted at any one time as shown on the certificate of eligibility shall be determined by applying the rating of the applicant to the total maximum capacity factor].

Section 4. Issuance of Certificate of Eligibility. (1) The department [Bureau of Highways] shall review each application for a certificate of eligibility and make a determination of eligibility within thirty (30) days after [the] receipt of the application unless such application is deferred as provided in Section 5(3) of this regulation. Upon receiving a separate written request from a contractor not prequalified with the department indicating its intent to bid on a specific federal-aid project which has been advertised within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days. [, unless an applicant certifies that he proposes to bid on a specific federal-aid project being advertised within the thirty (30) day period, in which event the bureau shall make a determination of eligibility within fifteen (15) days.]

(2) All certificates of eligibility shall terminate not later than 120 days after the end

of the applicant's fiscal year unless suspended or revoked. Ninety (90) days of this period is to permit the applicant to file a new application in accordance with Section 2 of this regulation, thirty (30) days is for the department's [bureau's] review of the application and, if approved, the issuance of the new certificate of eligibility.

(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.

Section 5. Reconsideration of Decisions of Construction Prequalification Committee. (1) An applicant may request reconsideration of the [a] maximum eligibility amount [rating] and/or the types of work set forth in its [a] certificate of eligibility by notifying the department [Bureau of Highways] in writing within ten (10) days after [the] receipt of its [a] certificate of eligibility. A request for reconsideration shall clearly state the basis of the request and be supported by information and evidence which indicates the certificate of eligibility should be amended. The department [Bureau of Highways] shall review the request and notify the applicant of its determination within thirty (30) days after [the] receipt of the [a] request for reconsideration.

(2) An applicant denied a certificate of eligibility may submit a new application when factors constituting the basis for the issuance of a certificate of eligibility warrant reconsideration. The department [Bureau of Highways] shall consider the new application and notify the applicant of the action taken within thirty (30) days after receipt of the application.

(3) An application which is deferred by the department shall remain in the possession of the department until such time that the reason for deferral is resolved to the satisfaction of the department. The department shall then take action on the deferred application to issue or deny a certificate of eligibility. The applicant submitting an application, which is deferred, will be notified of the deferral within ten (10) days after action is taken by the department to defer the application.

(4) [(3)] An interim application may be submitted when there has been a substantial increase in the net current assets of the applicant. Such interim application shall contain a financial statement certified in the same manner as statements prepared as of the close of the fiscal year. The department shall review the interim application and notify the applicant of its determination within thirty (30) days after receipt of the application. [A new certificate of eligibility may be issued on the basis of the interim application and financial statement.]

(5) [(4)] A certificate holder [An applicant], upon receipt of a request from the department [Bureau of Highways], shall submit an interim financial statement and/or current information relating to the applicant's organization, equipment and work status. The information requested must be submitted within thirty (30) days after [the] receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or [and] revocation of a certificate of eligibility.

Section 6. Revocation of Certificate of Eligibility or Reduction of Maximum Eligibility Amount [Capacity]. Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily or adhere to the laws, rules, regulations and specifications applicable to a contract or subcontract, the department [Bureau of Highways] may suspend and revoke the certificate of eligibility or reduce the maximum eligibility amount [capacity rating]. A notice to the certificate holder, setting forth the grounds on which the action is proposed, shall be sent by certified [registered] mail. The proposed action shall become final unless the certificate holder submits a written request for a hearing within ten (10) days after receipt of the notice. Within ten (10) days after receipt of a request for hearing, the department [bureau] shall set a date for an informal hearing at which time the certificate holder may submit any pertinent information and evidence. The department [Bureau of Highways] shall advise the certificate holder of its determination [findings] within ten (10) days after the informal hearing.

Section 7. Appeals from Construction Prequalification Committee Final Rulings. Any contractor [person or organization] aggrieved by the action taken by the construction prequalification committee in administering these rules and regulations may request a formal hearing before the commissioner of the department [Bureau of Highways]. The request for the formal hearing shall be filed in writing, [and] shall set forth the nature of the complaint and the grounds for appeal and must be received by the Commissioner of Highways within thirty (30) days after receipt of notification of such action by the construction prequalification committee.

FLOYD G. POORE, Secretary

STEPHEN REEDER, Commissioner

APPROVED BY AGENCY: May 7, 1985

FILED WITH LRC: May 13, 1985 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public comment hearing will be held on this proposed administrative regulation on June 27, 1985 at 10 a.m. in the fourth floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing, by June 22, 1985, so notify: Rusty Chevront, Chief Administrative Assistant, Office of the Secretary, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rusty Chevront

(1) Type and number of entities affected: All contractors desiring to bid on Department of Highway's contracts by becoming prequalified.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional requirements above and beyond those currently in effect.

(2) Effects on the promulgating administrative

body:

- (a) Direct and indirect costs or savings:
  1. First year: Minimal administrative costs.
  2. Continuing costs or savings: Minimal administrative costs.
  3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: No additional requirements above and beyond those currently in effect.
- (3) Assessment of anticipated effect on state and local revenues: N/A
- (4) Assessment of alternative methods; reasons why alternatives were rejected: The major reason for amending this regulation was to incorporate the policy whereby a contractor's subcontract work would not be charged against its maximum eligibility amount. The alternative to amending this regulation was to do nothing. The result of the do-nothing-alternative, would have been that the subject policy would have been null and void which was not the desired result. Therefore, the do-nothing-alternative was rejected.
- (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
  - (a) Necessity of proposed regulation if in conflict: N/A
  - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (6) Any additional information or comments: This is an amended regulation that has been revised to include updated policies and practices.

Tiering:

Was tiering applied? No. The intent is to treat all contractors the same in regards to becoming prequalified which in turn allows bidding for Department of Highway's contracts.

**TRANSPORTATION CABINET**  
**Department of Highways**  
**(Proposed Amendment)**

603 KAR 5:096. Highway classifications.

RELATES TO: KRS 189.222

PURSUANT TO: KRS 175.080 [13.082, 174.050], 189.222

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable weight and dimension limits on all highways included in the State Primary Road System. This regulation is adopted to identify each road in the highway system and indicate their classification.

Section 1. The weight and dimension limits set forth in 603 KAR 5:066 and 603 KAR 5:070 for truckway classifications shall apply on all highways in the State Primary Road System as indicated herewithin, unless bridge postings prohibit such weights on any particular segment.

Section 2. The maximum weight limits for the three (3) classifications of highways are as follows: "AAA" System, 80,000 pounds gross weight; "AA" System, 62,000 pounds gross weight; "A" System, 44,000 pounds gross weight. There shall be no tolerances allowed on gross weight, axle weight, or combinations of axle weights on

highways which are a part of the Interstate System [only].

Section 3. The classifications for each highway in the State Primary Road System are as follows:

\*COMPILER'S NOTE: Only those particular highways affected by the proposed amendment are shown here. 603 KAR 5:096 is printed in full in Volume 3, "Kentucky Administrative Regulations Service."

I-24

AAA--From the Illinois state line [to jct. US 60, w of Paducah; and from jct. US 68, e of Cadiz in Trigg Co.] to the Tennessee state line.

US 25

AAA--From jct. US 25E & US 25W [I-75], nw of Corbin in Laurel Co. to the Ohio River bridge in Covington [jct. I-75, approximately 4.0 miles n of Lexington; and from Fayette-Scott Co. line to jct. KY 22 at Dry Ridge].

[AAA--From jct. KY 14 at Bracht in Kenton Co. to the Ohio state line at the Clay Wade Bailey Bridge in Covington.]

[AA--From jct. I-75 n of Lexington to Scott-Fayette Co. line and from jct. KY 22 at Dry Ridge to jct. KY 14 at Bracht.]

KY 85

AAA--From jct. KY 70, e of Madisonville [to] extending ne 3.4 [1.8] miles to Green River Coal Co. mine haul road [Anton].

AA--From Green River Coal Co. mine haul road [Anton] to jct. KY 81, s of Sacramento.

A--From jct. US 62, 1.9 miles ne of Rockport in Ohio Co. to jct. KY 81, s of Calhoun in McClean Co.

KY 93

AAA--From jct. KY 293, s of Eddyville to jct. Frontage Road No. 9 near n side of I-24 [US 62 and 641 at Eddyville].

AA--From jct. KY 139 at the Trigg-Caldwell Co. line to jct. KY 293, s of Eddyville.

A--From jct. Frontage Road No. 9 near [US 62 at] Kuttawa to jct. KY 453, 3.8 miles w of Iuka in Livingston Co.

KY 112

AAA--From US 41A in Earlington extending sw to Copper Creek Road, a distance of 4.74 miles.

A--From US 62, e of Dawson Springs to jct. Copper Creek Rd. [US 41 in Earlington.]

KY 117

AAA--From US 41A, s of I-24 interchange, extending west 0.047 miles (Christian Co.).

A--From [jct. US 41A, near s side of I-24 Interchange in Christian Co. to] jct. US 68 at Gracey near Trigg Co. line to a point 0.047 miles w of US 41A.

KY 120

AAA--From the Crittenden-Webster Co. line [jct. KY 109 in Providence] to jct. US 41A in Providence (Webster Co.).

A--From jct. US 60 in Marion to the Crittenden-Webster Co. line; and from jct. US 41A in Providence to jct. US 41 at Slaughters [jct. KY 109 in Providence].



[A--From jct. US 41A in Providence to jct. US 41 at Slaughters.]

KY 122

AAA--From jct. KY 610, 1.7 miles n of Virgie, to jct. US 23 at Robinson Creek (Pike Co.).

A--From jct. KY 114, sw of Prestonsburg to jct. KY 610, 1.7 [US 23, 1.0] miles n of Virgie (Floyd-Pike Cos.) [in Pike Co.].

KY 152

AAA--From jct. US 68 in Harrodsburg, extending e 1.4 miles to entrance to rock quarry (Mercer Co.).

AA--From jct. KY 49 n of Loretto in Marion Co. to jct. US 150 nw of Springfield; and from Mercer-Washington Co. line to US 68 in [via] Harrodsburg; and from rock quarry entrance, 1.4 miles e of Harrodsburg [Burgin] to jct. US 27 near Bryantsville in Garrard Co.

A--From jct. US 150 in Springfield to Washington-Mercer Co. line.

KY 155

AAA--From jct. KY 55 at Elk Creek in Spencer [148 near Fisherville in Jefferson] Co. to jct. US 31E in Louisville.

[A--From jct. KY 55 at Elk Creek in Spencer Co. to jct. KY 148 near Fisherville.]

KY 189

AAA--From jct. US 62 w of Greenville to jct. US 62, ne of Powderly (Muhlenberg Co.).

A--From jct. KY 507 w of Alleghre in Todd Co. to jct. US 62, 0.7 mile w of Greenville.

KY 192

AAA--From jct. KY 80 near Somerset, via Mt. Victory to Rockcastle River Bridge; and from [jct. I-75 near London to] Boggs Road, 1.2 miles w of I-75, to Daniel Boone Parkway, e of London.

AA [A]--From Rockcastle River Bridge at the Laurel-Pulaski Co. line to Boggs Road, [a point] 1.2 miles sw of I-75 near London; and from jct. I-75 near London to jct. US 25 in London].

US [KY] 421

AAA--From Indiana state line at Milton to [jct. Ky 2004 at Sand Gap in Jackson Co.; and from the n city limits of Manchester to jct. KY 80 s of Manchester; and from jct. US 119 at Baxter to jct. KY 38 in Harlan; and from jct. KY 987 at Cawood] the to Virginia state line. Excluding: KY River Bridge at Frankfort - posted Type 1, 19 tons; Type 2, 22 tons; Type 3, 26 tons. Red Bird River Bridge in Clay Co. - posted Type 3, 30 tons.

[AA--From jct. KY 2004 at Sand Gap to NCL of Manchester; and from jct. KY 80 s of Manchester via Hyden to jct. US 119 at Baxter; and from jct. KY 38 in Harlan to jct. KY 987 at Cawood.]

KY 451

AAA--From jct. KY 15 near Glomawr, s of Hazard to jct. KY 15 in Hazard; and from se limits of D.B. Parkway interchange to KY 80.

A--From jct. KY 15 in Hazard to se limits of D.B. Parkway interchange; and from jct. KY 80 to jct. KY 28 near Chavies.

I-471

AAA--From jct. US 27 at Highland Heights to the Ohio State line in Newport (Campbell Co.).

KY 610

AAA [A]--From jct. US 23 at Dorton in Pike Co. to jct. KY 122, 1.7 miles n of Virgie [611 near Upper Caney School].

KY 611

A--From jct. KY 195 at Lookout in Pike Co. to jct. US 23, 1.0 miles w of Stewart [at Robinson Creek].

KY 814

AAA [A]--From jct. KY 109 in Hopkins Co. to jct. US 41A in Providence.

KY 841

AAA--From jct. KY 155, nw of Jeffersontown to jct. US [60, e of Middletown; and from jct. KY 1447 at Anchorage to jct. US] 42, ne of Louisville.

KY 1006

A--From entrance [jct. KY 192, 0.6 mile sw of London] to Levi Jackson State Park via Sublimity City Rd. and 5th St. in London to jct. US 25 at 5th and Main Sts. in London; includes 0.053 mile spur near jct. KY 1006 and US 25, se of London (Laurel Co.).

KY 1035

A--From jct. [KY 80, 1.4 miles w of London to end of state maintenance at] County Farm Spur Road near Pinetop to jct. KY 1956, w of London (Laurel Co.).

KY 1727

AAA--From Greenwood Road (KY 1931) along Terry Road, sw of Louisville, to Cane Run Road (KY 1934).

A--From Johnstontown Road via Terry Road to Greenwood Road.

KY 1931

AAA--From jct. Greenbelt Highway [Terry Road] (KY 1934) sw of Louisville to jct. Algonquin Parkway (KY 2054) in Louisville.

A--From jct. Cane Run [Lower River] Road (KY 1230) at Greenwood to jct. KY 1934 [Terry Road].

KY 1934

AAA--From jct. KY 1931 at Greenwood Road sw of Louisville, via Greenbelt Highway, to jct. US 31W at South 22nd St. in Louisville.

[A--From jct. Johnstontown Road to jct. KY 1931 at Greenwood Road.]

STEPHEN REEDER, Commissioner

FLOYD G. POORE, Secretary

APPROVED BY AGENCY: April 17, 1985

FILED WITH LRC: April 26, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public comment hearing will be held on this administrative regulation on June 27, 1985 at 9:30 a.m., local prevailing time, in the fourth floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must, in writing, no later than June 22, 1985 so notify: Rusty Cheuvront, Assistant to the Secretary, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rusty Cheuvront

(1) Type and number of entities affected: All motor carriers operating in Kentucky.

(a) Direct and indirect costs or savings to those affected: More highways rated to allow vehicles with a gross weight of 80,000 pounds allow greater ease for truckers to establish transportation routes. At times a more direct route with the resultant savings in time and fuel can be established.

1. First year: Minimal savings

2. Continuing costs or savings: Minimal savings

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Do nothing; alternative was rejected because when highways are strengthened the public should be able to operate heavier vehicles over them.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET  
Department of Education  
Office of Local Services  
(Proposed Amendment)

702 KAR 3:090. Depository bond, penal sum.

RELATES TO: KRS 160.570

PURSUANT TO: KRS [13.082,] 156.070, 160.570 [156.130, 156.160]

NECESSITY AND FUNCTION: KRS 160.570 requires each local board of education - designated depository of funds to execute bond for the faithful performance of its duties, such bond to be approved by local board and the State Board of Education; defines the nature and qualifying sureties for such bond; and requires the state board to regulate the penal sum of the bond. This regulation provides [To provide] for certain requirements [regulations] relative to bonds of depository.

Section 1. It shall be the duty of each local board of education, on the advice of the superintendent, to determine the penal sum of the bond of depository.

Section 2. No depository bond shall be

approved by the State Board of Education which in its [the] opinion [of the Superintendent of Public Instruction] is inadequate to insure the deposits of the local board of education.

Section 3. As security for this bond, the depository bank shall deposit with its escrow agent, collateral in an amount equal to the penal sum of the bonds. This collateral shall consist of United States Government Bonds [and/or] Kentucky School [Building] Revenue Bonds and/or federal government agency obligations such as obligations of the Federal Farm Credit Banks, the Federal National Mortgage Association, and the Federal Home Loan Bank. The escrow agent shall file safekeeping receipts with the local board of education as evidence that collateral has been pledged in accordance with the provisions of the bond executed by the depository institution. At no time may the local board of education permit a reduction of the collateral of a bond without execution of a new bond with prior approval of the Superintendent of Public Instruction and subsequent reporting of such to the state board.

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Moubray

(1) Type and number of entities affected: 180 school districts

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No fiscal impact

(4) Assessment of alternative methods; reasons why alternatives were rejected: OAG Opinion 85-3

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions:

(6) Any additional information or comments:  
None

Tiering:

Was tiering applied? Yes.

EDUCATION AND HUMANITIES CABINET  
Department of Education  
Office of Local Services  
(Proposed Amendment)

702 KAR 5:010. Responsibilities of division.

RELATES TO: KRS 156.160, 189.540

PURSUANT TO: KRS [13.082,] 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board of Education to promulgate regulations relating to the safety of public school children, the transportation of such children to and from school, and the operation of school buses. This regulation establishes [To establish] guidelines and procedures whereby the Division of Pupil Transportation will be enabled and empowered to offer direct assistance to the school districts in these areas: service to the pupils, school bus safety, and economy of operation.

Section 1. The Division of Pupil Transportation shall make the calculations for pupil transportation allotment purposes under the Minimum Foundation Program that are necessary to determine the calculated pupil transportation program cost for each district that provides transportation for its pupils.

Section 2. The Division of Pupil Transportation shall be responsible for the development of a standardized school bus driver training curriculum, meeting the standards of 702 KAR 5:080, Sections 8, 9, and 10, for approval by the State Board of Education, and shall keep the curriculum up-to-date by revision when experience indicates updating is necessary. The division shall be responsible for training and certifying instructors of the training curriculum [basic school bus driver training programs that can be used by division personnel and local district personnel for pre-employment and in-service training].

Section 3. No person shall be certified to teach the school bus driver training curriculum until he or she has satisfactorily completed a minimum of twenty (20) hours classroom and driving instruction, conducted by the Division of Pupil Transportation and relevant to the approved driver training curriculum, and has been issued an instructor's certificate by the Superintendent of Public Instruction. Instructors shall be required to renew their certificates annually by completing six (6) appropriate hours of update training conducted by the division.

Section 4. [3.] The Division of Pupil Transportation personnel shall have the authority at any time to make a safety inspection of any and all school buses and special type vehicles either owned by the board or contracted to the board that are being used to transport pupils to and from school, held in

reserve as substitutes for this purpose, or are being proposed for this purpose. If any of these school buses or special type vehicles are found to be in an unsafe condition, personnel of the Division of Pupil Transportation shall have the authority to prohibit their further use for the transportation of pupils until the conditions causing them to be unsafe shall have been corrected.

Section 5. [4.] The Division of Pupil Transportation personnel shall have the authority to prohibit the use of school buses and/or special type vehicles used for the transportation of pupils to and from school that have been purchased by boards of education or school bus contractors that were originally manufactured to the specifications of a state other than Kentucky until such school buses shall have been approved by said Division of Pupil Transportation personnel as meeting the minimum safety standards for Kentucky school buses of the same model year.

Section 6. [5.] The Division of Pupil Transportation shall have the authority to make a district pupil transportation system survey in any school district that provides transportation for its pupils, or that is planning to provide transportation for its pupils.

Section 7. [6.] The Division of Pupil Transportation shall have the authority to require the superintendent of a school district to prepare or cause to be prepared: pupil transportation maps, bus route descriptions, and reports necessary for calculating the district's entitlement under the minimum foundation program and for the purposes of the Division of Pupil Transportation in making a pupil transportation system survey for the district.

ALICE McDONALD, Superintendent

APPROVED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don Fightmaster

(1) Type and number of entities affected:  
Local District Training Instructors

(a) Direct and indirect costs or savings to those affected:

1. First year: Salary of training instructors for time spent receiving training and time spent training bus drivers

2. Continuing costs or savings: Salary for time spent on update training and printing cost for training materials

3. Additional factors increasing or decreasing costs (note any effects upon competition):

Accidents and operating cost should be reduced by better trained bus drivers

(b) Reporting and paperwork requirements: Certification to State of bus drivers who have successfully completed training

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Staff time and travel for training instructors and printing of training manuals and instructional materials

2. Continuing costs or savings: Staff time and travel for training instructors and printing of training manuals and instructional materials.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Compilation and maintenance of training records and issuance of certificates

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. In the interest of uniformity and safety of school children throughout the state.

#### EDUCATION AND HUMANITIES CABINET

Department of Education  
Office of Local Services  
(Proposed Amendment)

702 KAR 5:030. Superintendents' responsibilities.

RELATES TO: KRS 156.160, 189.540

PURSUANT TO: KRS [13.082,] 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board of Education to promulgate regulations relating to the safety of public school children, the transportation of such children to and from school, and the operation of school buses. This regulation provides [To provide] the district superintendent with the regulations necessary to assist him in administering the district's pupil transportation programs and to provide the maximum consistency throughout the state.

Section 1. Each school district [The] superintendent shall be responsible for the general supervision of the district's pupil transportation program. The superintendent may designate another employee or other employees of the board to assist in carrying out this responsibility. For the purpose of these regulations, the word "superintendent" shall mean the superintendent or his designate.

Section 2. The superintendent shall require that a safety inspection be made on each school bus owned and operated by the board or

contracted to the board at least once each month that the district's schools are in session. This inspection shall be made by a competent person. If, upon inspection, a school bus is found to be in unsafe operating condition, the superintendent shall withhold the bus from operation until the required repairs are made. The superintendent shall be responsible for keeping the records of the bus safety inspections on file, and shall be responsible for certifying to the Division of Pupil Transportation at least once each month that each school bus used during that month has received the proper safety inspection.

Section 3. The superintendent shall be responsible for preparing the school bus route maps, school bus inventories, and other reports required by the Division of Pupil Transportation for the purpose of making the pupil transportation cost calculation for the Minimum Foundation Program.

Section 4. The superintendent shall be responsible for making reports on a monthly basis to the Division of Pupil Transportation on all school bus accidents that happened to the district's buses during the month.

Section 5. The superintendent shall be responsible for providing the necessary and [or] required school bus driver training before a school bus driver shall enter into the duties of transporting pupils to and from school or events related to such schools. This training shall at least include the school bus driver course prescribed by the State Board of Education, in accordance with 702 KAR 5:080, Sections 8 and 9, and shall be conducted by a certified instructor [over-the-road training in the actual operation of the bus, familiarization with the assigned bus route, and primary instruction concerning the Kentucky Revised Statutes, State Board of Education regulations, and local district policies that pertain to pupil transportation]. Evidence that the driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 6. The superintendent shall be responsible for providing the required in-service school bus driver training which each school bus driver must complete annually for certification renewal, in accordance with 702 KAR 5:080, Section 10. The in-service training shall include at least eight (8) hours of appropriate instruction conducted by a certified instructor. Evidence that each driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 7. The superintendent may issue a temporary school bus driver's permit if it is necessary to employ an applicant on an emergency basis as a replacement or additional driver; provided the applicant meets the qualifications set forth in 702 KAR 5:080, and a certified instructor judges the applicant competent to safely drive a school bus and safeguard the welfare of students. The temporary school bus driver's permit shall be valid for a period of

twenty (20) school days and shall be non-renewable.

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don Fightmaster

(1) Type and number of entities affected: Local District Superintendents

(a) Direct and indirect costs or savings to those affected:

1. First year: Cost of training instructors and bus drivers

2. Continuing costs or savings: Update training

3. Additional factors increasing or decreasing costs (note any effects upon competition): Should realize reduction in accidents and operating cost with better trained bus drivers

(b) Reporting and paperwork requirements: Submit evidence of training to Department of Education

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Compilation and maintenance of training records and issuance of completion certificates

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. In the interest of uniformity and safety of school children throughout the state.

#### EDUCATION AND HUMANITIES CABINET Department of Education Office of Local Services (Proposed Amendment)

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.160, 189.540

PURSUANT TO: KRS [13.082,] 156.070, 156.160, 189.540

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the State Board to adopt regulations to govern the design and operation of school buses. This regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. All local boards of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and such events related to such schools. The medical examination shall include tests for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent.

Section 2. No person shall drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, etc., due to injury or disease that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. Any driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) No person shall drive a school bus unless he or she has:

(a) Visual acuity of at least 20/40 (Snellen) in each eye either without glasses or by correction with glasses;

(b) Form field vision of not less than a total of 140 degrees;

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. No person shall drive a school bus whose hearing is less than 7/15 in the better

ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear such properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. Drivers of school buses shall be between eighteen (18) and sixty-nine (69) years of age. A driver shall not start driving a school bus until his eighteenth birthday, but any driver turning seventy (70) years of age during the school term may be allowed to drive until the end of the semester in which said birthday occurs.

Section 7. The school bus driver shall have a current driver's license that is valid in Kentucky.

Section 8. Beginning with the 1985-86 school year, no person shall begin driving a school bus until he or she has completed the beginning school bus driver training course prescribed by the State Board of Education and has been issued a Kentucky school bus driver certificate by the Superintendent of Public Instruction, based upon evidence submitted by a certified instructor that all training requirements have been satisfied; provided that a temporary school bus driver's permit may be issued under the provisions set forth in 702 KAR 5:030. The prescribed training course for beginning drivers shall consist of the following instructional units and minimum instructional times:

- (1) Laws and regulations - one (1) hour;
- (2) Driving fundamentals - one (1) hour;
- (3) Care and maintenance - one (1) hour;
- (4) Critical situations - one (1) hour;
- (5) Accidents and emergency procedures - one (1) hour;
- (6) Pupil management - one (1) hour;
- (7) First aid - one (1) hour; and
- (8) Vehicle operations - one (1) hour.

Section 9. Beginning with the 1986-87 school year, no school bus driver shall continue to drive a school bus until he or she has completed the school bus driver training course prescribed by the State Board of Education and holds a Kentucky school bus driver certificate issued by the Superintendent of Public Instruction, based upon evidence submitted by a certified instructor that all training requirements have been satisfied. The prescribed training course for initial certification of experienced drivers shall consist of the instructional units and minimum times outlined in Section 8 of this regulation, plus the following instructional units and minimum instructional times:

- (1) Special education transportation - five-tenths (.5) hour; and
- (2) Extra curriculum trips - five-tenths (.5) hour.

Section 10. Beginning with the 1987-88 school

year, all school bus drivers shall be required to renew their certificates annually by satisfactorily completing eight (8) hours of in-service driver safety training conducted by a certified instructor and relevant to the curriculum established under the standards set forth in Sections 8 and 9 of this regulations.

Section 11. [8.] Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 12. [9.] In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 13. [10.] The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 14. [11.] The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 15. [12.] The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 16. [13.] The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 17. [14.] The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless a written permit signed by the school principal or his designate is presented to the driver.

Section 18. [15.] The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission of the district superintendent to do so.

Section 19. [16.] The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks of any type to be transported.

Section 20. [17.] The driver shall not knowingly permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not knowingly permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 21. [18.] The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 22. [19.] The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 23. [20.] The driver shall activate the flashing stop warning lights and/or the stop signal arm a sufficient distance from a bus stop that would permit any prudent motorist to stop short of striking or passing the stopped bus.

Section 24. [21.] For safety reasons, the driver shall not permit gasoline to be put into the bus gasoline tank while pupils are on board the bus.

Section 25. [22.] If a pupil's conduct on the bus is such that it endangers the lives and morals of the other people on the bus and makes it unsafe for the bus to continue on its route, and when requested by the driver to desist from such conduct and the pupil does not comply, it shall be the duty of the driver to order the pupil to leave the bus, and if this order is refused, to eject the pupil from the bus or send for assistance, whichever the circumstances dictate. Ejecting a pupil from the bus shall be done only in the most extreme circumstances. When ejection from the bus is required, the driver shall notify the principal of the school where the pupil attends, the district superintendent or some other school authority of the action taken as soon as it is possible to do so.

Section 26. [23.] In the interest of safety, the driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The driver shall open the bus entrance door, listen, and look for the approach of a train from both directions. When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks. In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks. Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 27. [24.] The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 28. [25.] The driver shall make a pre-trip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 29. [26.] The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on the sections of highways over which the bus travels, nor at any

time in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe for the bus to travel at that speed.

Section 30. [27.] The driver shall wear the driver's seat belt at all times that the bus is being used to transport pupils.

Section 31. [28.] The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don Fightmaster

(1) Type and number of entities affected:  
Local School Districts

(a) Direct and indirect costs or savings to those affected:

1. First year: Cost of training drivers

2. Continuing costs or savings: In-service training

3. Additional factors increasing or decreasing costs (note any effects upon competition): Should realize overall reduction in accidents and operating cost with better trained drivers

(b) Reporting and paperwork requirements: Submit evidence of training to Department of Education

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of training instructors of the training program

2. Continuing costs or savings: Update training of instructors

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Compilation and maintenance of training records and issuance of completion certificates

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation



with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. In the interest of uniformity and safety of school children throughout the state.

# EDUCATION AND HUMANITIES CABINET

Department of Education  
Office of Local Services  
(Proposed Amendment)

702 KAR 7:010. Terms and months.

RELATES TO: KRS 158.060, 158.070

PURSUANT TO: KRS 156.031, 156.070, 158.070

NECESSITY AND FUNCTION: KRS 158.060 and 158.070 define and establish the school day, school month, and school term, and direct the State Board of Education to adopt regulations governing the use of school days. This regulation is necessary for efficient management, control and operation of schools and to insure uniformity in the school term, month and day in all approved schools of the state.

Section 1. The minimum school term of 185 days with a minimum six (6) actual instructional hour day shall consist of nine (9) twenty (20) day school months and one (1) partial school month of five (5) days. Schools shall be in session a minimum of six (6) actual instructional hours on each of these days except as otherwise provided by KRS 158.060, 158.070 and regulations of the State Board of Education.

Section 2. (1) If a school district, during any school year, misses a total of five (5) hours or less on all school days shortened due to an emergency, this time will not have to be made up and no shortened school day report will be submitted to the Department of Education for those hours. Any time missed on shortened school days over the five (5) hours will have to be made up and these hours beyond the five (5) will be reported to the Department of Education on a shortened school day report. Partial days missed over the five (5) hours can be made up by extending the regular school day upon approval of the Department of Education. Those school districts already going longer than the six (6) hour minimum instructional day will be allowed to count that extra time toward making up partial days missed over the five (5) hours forgiven but only upon approval of the Department of Education. The extended school day to make up hours missed beyond the five (5) hours will start upon notification to the Department of Education, pending approval. Extending the school day or counting time beyond the six (6) hour minimum instructional day to make up time missed on shortened school days due to emergency will be allowed only after the time is missed. "Snow banking" time is not permissible.

(2)(a) All full school days missed will be made up by putting these full days back in the school calendar. All school districts shall have a minimum of 175 instructional days each school year. The only exception would be in extreme situations as explained in KRS 158.070(3)(a) and (3)(b). Disaster days as outlined in KRS

158.070(3)(b) will be recommended by the Superintendent of Public Instruction and approved by the State Board of Education only in catastrophic situations. Only under dire circumstances will any school district be excused from the required 175 day instructional year. Except as provided in paragraph (b) of this subsection, no school district shall be considered for local disaster days unless the district has missed more than twenty (20) full teaching days system-wide. All school districts shall make up at least the first twenty (20) full teaching days missed in a school year by adding these days back into the school calendar.

(b) The Superintendent of Public Instruction and the State Board of Education shall continue considering requests for disaster days from school districts where one (1) school, or only part of the district, is forced to miss school due to an emergency, on a particular day.

Section 3. Each day on which school is not in session for any reason other than those specified by State Board of Education regulations or in excess of the limitations therein provided, shall not be counted in the minimum school term.

Section 4. No report shall be made until the completion of a twenty (20) day school month except that a report for the tenth school month shall be made at the conclusion of the school term.

Section 5. (1) Each school day shall consist of at least six (6) hours of actual organized and supervised instruction, exclusive of lunch periods and recesses, except that kindergarten, readiness classes, first grade classes, and classes for the handicapped may be a program of less than six (6) hours per day under policies adopted by the local school board and approved by the State Board of Education. Lack of compliance with minimum school day requirements shall, pursuant to KRS 157.350, result in appropriate proportional reductions in Foundation Program allotments.

(2) The following are the only approvable activities that may be conducted during the six (6) hour school day:

(a) Courses and activities included in the "Program of Studies for Kentucky Schools, Grades K-12":

(b) Enrichment courses approved by the State Board of Education;

(c) Experimental courses or programs approved by the State Board of Education;

(d) Co-curricular activities, such as club meetings and assemblies, as long as such are related directly to the instructional program and are scheduled so as to minimize absences from classroom instruction; and

(e) Homeroom in the morning and afternoon for checking attendance. These periods shall not exceed ten (10) minutes per homeroom or twenty (20) minutes daily.

Section 6. The school day shall not be shortened on regularly scheduled school days except in cases of emergency declared by the local superintendent in accordance with policies of the local board of education [, and partial days missed shall be made up in accordance with applicable law and State Board of Education

regulations. Whole school days may be rescheduled when the need arises by following the procedure in 703 KAR 2:020, Section 3].

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Calloway

(1) Type and number of entities affected: 180 public school districts

(a) Direct and indirect costs or savings to those affected: N.A.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: N.A.

(2) Effects on the promulgating administrative body: N.A.

(a) Direct and indirect costs or savings: N.A.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: N.A.

(3) Assessment of anticipated effect on state and local revenues: N.A.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N.A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N.A.

(a) Necessity of proposed regulation if in conflict: N.A.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N.A.

(6) Any additional information or comments: In order to encourage local school districts to plan ahead, the State Board of Education directed the Department to develop a regulation stating that no district would be considered for disaster days beginning with the 1985-86 school year unless a district had missed more than 20 teaching days systemwide.

Tiering:

Was tiering applied? No. Not applied in interest of uniformity.

#### EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Local Services

(Proposed Amendment)

702 KAR 7:020. Calendar.

RELATES TO: KRS 158.070

PURSUANT TO: KRS 156.070 [13.082,] 158.070

NECESSITY AND FUNCTION: KRS 158.070 defines the school term and holidays and other days to be included or excluded from the calendar. This regulation is necessary for efficient management, control and operation of schools and to assure uniformity in the days all approved schools are in session.

Section 1. On or before June 15 of each year, local boards of education shall, upon recommendation of the superintendent, adopt a school calendar fixing the opening and closing dates of each school month, designating the dates of school days within each school month and describing the school days on which schools will be dismissed in accordance with State Board of Education regulations. This section shall apply to all local boards of education operating experimentally or year-round school programs.

Section 2. (1) Each local board of education shall, on or before July 1 of each year, file a copy of the adopted school calendar with the Department of Education for approval as to the compliance with these regulations. No district shall be paid any installment of its Foundation Program allotment until the school calendar for the district has been so approved. In addition to the minimum 175 teaching days, school calendars shall build in enough teaching days to equal the average number of full school days missed system-wide in each district over the immediately preceding past five (5) years. (For example, if a school district missed an average of fifteen (15) days system-wide over the immediately preceding past five (5) years, the school calendar would reflect 190 teaching days and 200 total days for the term.) Final approval of a school calendar shall be withheld if, in the judgment of the Department of Education, a school calendar is not reasonable when the proposed starting date, the proposed ending date, and the average number of days missed over the past five (5) years are considered.

(2) If a school district ultimately misses fewer days than the additional teaching days built into its calendar, then any such excess additional days may be eliminated from the calendar.

Section 3. A local board of education may amend its school calendar upon recommendation of the superintendent within the limitations of pertinent State Board of Education regulations.

Section 4. All amendments to school calendars shall be submitted on the appropriate form to the Department of Education for approval as to compliance with these regulations no later than April 15 of each year. Any subsequent amendments to school calendars in the same school year shall be submitted to the Department of Education no later than five (5) days after the meeting of the local board of education at which the amendment is approved.

Section 5. The school calendar shall provide for the same number of days of classroom instruction in all schools operated by a local board of education.

Section 6. The four (4) days on which schools may be dismissed for holidays as provided for in KRS 158.070 shall be selected from those listed in KRS 2.110, 18.350 and 158.070 subject to the provisions of such sections, except in presidential election years the day of the regular election may be used as one of the allowable holidays. School districts shall be closed on this date as required by KRS 2.190, but districts may exclude the date from their school calendar and not count it as one (1) of their four (4) allowable holidays. In this case, school districts would choose their four (4) allowable holidays from those listed in KRS 2.110.

Section 7. Local boards of education may use one (1) day of the minimum school term for the opening of schools and one (1) day for the closing of schools without the presence of pupils.

Section 8. Local boards of education shall use four (4) days of the minimum school term for in-service professional development and planning activities for the professional staff without the presence of pupils. Proper approval for these four (4) days shall be secured from the State Department of Education.

Section 9. If local boards of education do not dismiss schools for four (4) holidays, one (1) day for opening schools, and one (1) day for closing schools as provided in KRS 158.070(3), the number of days of actual classroom instruction shall be increased accordingly.

Section 10. The two (2) consecutive days schools are required to be closed for the purpose of permitting professional school employees to attend state-wide professional meetings and the one (1) day for the regional or district professional meetings shall not be counted as a part of the minimum school term. The Superintendent of Public Instruction will approve dates which have been selected by the local boards of education for regional or district meetings.

ALICE McDONALD, Superintendent  
ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Calloway

(1) Type and number of entities affected: 180 public school districts

(a) Direct and indirect costs or savings to those affected: N.A.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: N.A.

(2) Effects on the promulgating administrative body: N.A.

(a) Direct and indirect costs or savings: N.A.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: N.A.

(3) Assessment of anticipated effect on state and local revenues: N.A.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N.A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N.A.

(a) Necessity of proposed regulation if in conflict: N.A.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N.A.

(6) Any additional information or comments: 702 KAR 7:020 needs to be revised to allow the Department of Education to approve school calendars based on their reasonableness. The rationale being to try to avoid difficult situations caused by school districts missing school due to severe weather.

Tiering:

Was tiering applied? No. Not applied in interest of uniformity.

## EDUCATION AND HUMANITIES CABINET Department of Education Office of Local Services (Proposed Amendment)

### 702 KAR 7:030. Census.

RELATES TO: KRS 159.170, 159.240, 159.250, 159.260

PURSUANT TO: KRS 156.070, 156.160, 159.170, 159.250, 159.260

NECESSITY AND FUNCTION: KRS 159.170 requires a local district from which a child has withdrawn because of change of residence to advise the district to which the child has moved of such on forms prescribed by the State Board of Education; KRS 159.240 requires each board of education to maintain a permanent and continuing school census; KRS 159.250 describes the nature of the school census; and KRS 159.260 requires such a report to be provided annually to the Superintendent of Public Instruction. This regulation is necessary to assure uniformity in keeping and reporting the school census.

Section 1. The annual school census report shall be completed and a copy filed with the State Department of Education on or before June 1 of each year as provided by KRS 159.260. The

report shall include all children legally residing in the local school district who will, on July 1 following, be between the age of five (5) and eighteen (18) years.

Section 2. The requests for records and other information involving the transfer of pupils as required by KRS 159.170 shall be processed by the local superintendent or his designee. In most cases, the designee will be the director of pupil personnel or the school principal. [Form RR-4, Notice of Transfer, shall be used for both direct and reverse transfers as provided by KRS 159.170.]

Section 3. Form RR-4 may be used to comply with Section 2 of this regulation and with KRS 159.170. Local boards of education may adopt an alternative form and/or process to comply with KRS 159.170. Any problems concerning the transfer of pupils shall be reported to the Division of Pupil Attendance, State Department of Education. [When a pupil of school census age moves from one (1) school district to another within the state of Kentucky, the director of pupil personnel of the local school district where the child has resided shall mail a Direct Transfer (RR-4) to the director of pupil personnel of the local school district where the pupil has established a legal residence.]

[Section 4. When a director of pupil personnel receives a pupil from another local school district in Kentucky of census age without a direct transfer, a reverse transfer shall be mailed to the director of pupil personnel of the local school district where the pupil reports he formerly resided.]

[Section 5. If a director of pupil personnel fails to answer a request for transfer or pupils by reverse transfer method, then the director of pupil personnel making the request shall report each failure to the Division of Pupil Attendance, State Department of Education and they shall contact the Director of Pupil Personnel who failed to honor the request for transfer.]

[Section 6. Transfers shall be filed by the month.]

ALICE McDONALD, Superintendent

APPROVED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles E. Calloway

(1) Type and number of entities affected: 180 local school districts

(a) Direct and indirect costs or savings to those affected: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Will reduce paperwork for local school districts through simplification of transfer process

(2) Effects on the promulgating administrative body: No change

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: N.A.

(3) Assessment of anticipated effect on state and local revenues: N.A.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N.A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N.A.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Proposed amendment will bring this regulation in line with policy Department adopted approximately five years ago

Tiering:

Was tiering applied? No. Not applied in interest of uniformity

#### EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Instruction

(Proposed Amendment)

#### 704 KAR 3:304. Required program of studies.

RELATES TO: KRS 156.160

PURSUANT TO: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to establish minimum courses of study and the scope of instruction that may be offered in the different classes of common schools, and to establish the minimum requirements for graduation from the courses offered. This regulation implements that duty.

Section 1. Pursuant to the authority vested in the State Board of Education by KRS 156.070 and 156.160, the "Program of Studies for Kentucky Schools, Grades K-12," as amended on May 7, 1985, [September 12, 1984] is hereby promulgated and filed with the Legislative Research Commission and incorporated herein by reference. Copies may be obtained from the Office of Instruction, Department of Education.

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the

regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Laurel True

(1) Type and number of entities affected: Public schools

(a) Direct and indirect costs or savings to those affected: There will be no cost for implementing the amendments to the regulation

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork required

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no additional reporting or paper required.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Tiering not applied since all districts have the option of implementing selected courses/programs

## EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Instruction

(Proposed Amendment)

704 KAR 3:335. State plan for the administration of Chapter 2, ECIA of 1981.

RELATES TO: KRS 156.031, 156.035

PURSUANT TO: KRS [13.082,] 156.031, 156.070

NECESSITY AND FUNCTION: This regulation implements the State Board of Education's plan approval and federal statute implementation functions under KRS 156.031 and 156.035 relative to federal funds received under Chapter 2 of the Education Consolidation and Improvement Act of 1981.

Section 1. Pursuant to the authority vested in

the Kentucky State Board of Education, the Kentucky State Plan for Chapter 2, Education Consolidation and Improvement Act of 1981, shall be prepared and approved by the State Board of Education, in accordance with the appropriate federal guidelines, and submitted to the U.S. Secretary of Education for his approval. This document is incorporated by reference and hereinafter shall be referred to as the "State Plan," adopted May 7, 1985 [June 22, 1982], for fiscal years ending September 30, 1988 [1985]. Copies of the State Plan may be obtained from the Division of Instructional Support [Division of Chapter 2], State Department of Education.

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joe Westerfield

(1) Type and number of entities affected: All local school districts and the state Department of Education

(a) Direct and indirect costs or savings to those affected: This program is by law designed to supplement state and local funds in the local school districts and the Department of Education

1. First year: N/A

2. Continuing costs or savings: This program provides supplementary funds to fund programs a school district or the Department of Education may not be able to afford otherwise.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This is a continuing federal grant

(b) Reporting and paperwork requirements: Each local school district submits an application, quarterly financial reports, and an evaluation report at the end of each year

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: Federal funds are provided to administer the grant as well as other funds to strengthen the Kentucky Department of Education

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Once every three years the State Education Agency files an application with the U.S. Department of Education. An amendment is filed each year as well as evaluation reports for each year

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N.A.

(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Any regulation that would create a supplant issue, such as if the state mandated computers for every classroom, Chapter 2 funds could no longer be used to purchase computers until each school district had a computer for every room.

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Tiering not possible under federal law providing these funds.

#### EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Instruction

(Proposed Amendment)

#### 704 KAR 4:010. Physical education.

RELATES TO: KRS 156.160

PURSUANT TO: KRS [13.082,] 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt regulations governing medical inspection, physical education and recreation, and other rules and regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. This regulation implements that duty relative to health and physical education instruction.

[Section 1. (1) All elementary school pupils shall receive organized physical education instruction which shall total a minimum of 120 minutes per week.]

[(2) In the secondary school, opportunities for physical education experiences shall be provided for each pupil. Each student shall earn a minimum of one-half (1/2) credit on the secondary level in health and one-half (1/2) credit in physical education as a graduation requirement.]

Section 1. [(3)] Elementary and secondary physical education programs or courses shall follow the descriptions and requirements recorded in the physical education section of the "Program of Studies for Kentucky Schools, Grades K-12," as adopted in 704 KAR 3:304, and in the minimum unit requirements for high school graduation set forth in 704 KAR 3:305.

Section 2. [(4)] A local board of education may authorize a child whose parents or guardian present a certificate from a licensed physician to the effect that because of the child's physical condition, participation in the required one-half (1/2) unit physical education course in high school is not in the best interest of the child, to substitute a physical education course which is within the capabilities of the child as specified by the child's physician.

[Section 2. Each school shall include health instruction in its curriculum for grades K-12. All pupils shall receive health instruction in

programs as described in the "Program of Studies for Kentucky Schools, K-12."]

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Conley Manning

(1) Type and number of entities affected:

180 public school districts

(a) Direct and indirect costs or savings to those affected: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: NA

(4) Assessment of alternative methods; reasons why alternatives were rejected: NA

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: NA

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Tiering not applied since all school boards (schools) must comply with elementary and secondary physical education regulations

#### EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Instruction

(Proposed Amendment)

#### 704 KAR 10:022. Elementary, middle and secondary schools standards.

RELATES TO: KRS 156.160

PURSUANT TO: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt rules and regulations relating to grading, classifying,

and accrediting all common schools, and further allows private, parochial, and church schools to voluntarily comply with accreditation standards and to be so certified by the state board. This regulation implements this duty by prescribing general standards to be used in evaluation of public elementary, middle and secondary schools, and of those non-public schools voluntarily seeking an accreditation evaluation.

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 156.070 and 156.160, the Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle and Secondary Schools, as amended on November 28, 1984, are presented herewith for filing with the Legislative Research Commission, and incorporated by reference. [The Standards for Accrediting Kentucky Schools, 1980-81, shall remain in effect through the 1984-85 school year for those districts which cannot, because of time and personnel constraints on the Superintendent of Public Instruction, be assessed by the Department of Education under the new standards until the 1985-86 school year, and said accreditation standards are also incorporated herein by reference.]

Section 2. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 156.160(2), non-public schools which voluntarily request accreditation shall be in compliance with all standards and indicators included in the Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle and Secondary Schools except those marked "N/A" (not applicable). These Voluntary Non-Public School Accreditation Standards, May, 1985, are presented herewith for filing with the Legislative Research Commission and incorporated herein by reference.

Section 3. The procedures for the voluntary accreditation of individual non-public schools or related groups of such schools under common management and control shall be as follows:

(1) All non-public schools or groups of schools which voluntarily request accreditation shall notify the Division of Accreditation by letter of their intentions.

(2) An Instructional Services Advisor (I.S.A.) shall be assigned to a school and shall be the liaison between the school and the Department of Education. The I.S.A. shall provide the school with the department's self-study guide and provide technical assistance as needed.

(3) An on-site team will visit each school to validate the school's self-study. This team shall be appointed by the Department of Education and shall consist of at least three (3) persons - an I.S.A., a local non-public school official and another Department of Education staff member.

(4) An additional team member shall be appointed for each additional five (5) faculty members beyond fifteen (15).

(5) A report shall be generated by the on-site team and a copy presented to the school or related group of schools. The school or related group of schools shall prepare a three (3) year plan of action to correct all non-compliance. The plan shall be monitored annually to assure that the plan of action is being implemented.

(6) The school or related group of schools

shall then be placed on a five (5) year accreditation cycle. The first year shall be the self-study and the on-site visit followed by a three (3) year plan of action, and the last year shall be devoted to updating the self-study.

(7) State funds may not be used for the accreditation of non-public schools. Such schools shall reimburse the Department of Education the total costs of accreditation certification. Including necessary follow-up, either from their own funds or from any appropriate federal grants.

Section 4. [2.] "The Merit Rating Procedural Information and General Criteria for Guidance Programs," March, 1985, and "Merit Rating Guidelines for Kentucky Schools," as adopted on July 9, 1984, are presented herewith for filing with the Legislative Research Commission and incorporated by reference.

Section 5. [3.] A copy of all documents incorporated in this regulation may be obtained from the Office of Instruction, Department of Education.

ALICE McDONALD, Superintendent

APPROVED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Elder

(1) Type and number of entities affected: Approximately 521 non-public schools totally voluntary

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct cost dependent upon the size of the school

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect. Cost will be borne by non-public schools

(4) Assessment of alternative methods; reasons why alternatives were rejected: Statutes mandate that accreditation for non-public schools be voluntary

(5) Identify any statute, administrative regulation or government policy which may be in



conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This is being done at the request of non-public schools.

Tiering:

Was tiering applied? No. In order to provide for consistency

# EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Instruction

(Proposed Amendment)

704 KAR 15:080. Paraprofessional employees and volunteer personnel.

RELATES TO: KRS 161.010, 161.030, 161.044

PURSUANT TO: KRS [13.082,] 156.070, 161.044

NECESSITY AND FUNCTION: KRS 161.010 defines a paraprofessional, KRS 161.030 vests the certification of all teachers and other school personnel with the State Board of Education, and KRS 161.044 directs the State Board to establish a plan for the qualification and utilization of adult paraprofessional employees and adult volunteer personnel in the schools. This regulation prescribes the guidelines by which local school districts may utilize and supervise adult paraprofessional employees and adult volunteer personnel.

Section 1. Local boards of education may utilize adult volunteer and adult paraprofessional employees in accordance with KRS 161.044 and 161.010(4), (5) and subject to the following provisions:

(1) For each paraprofessional employee the local school district shall prepare and maintain an up-to-date job description which outlines the duties that the individual is authorized to perform and which further describes the formal preparation or professional judgments of competency that corroborate the qualifications of the individual to perform those duties. The professional administrative and teaching staff may establish formal evaluation procedures to arrive at the professional judgments of competency that are to be entered into the written job description.

(2) The professional administrative and teaching staff, as well as the paraprofessional employees, shall have copies of the job descriptions of the paraprofessional personnel under their direction and shall limit the work assignment of the paraprofessional personnel to the duties outlined in the job descriptions.

(3) Paraprofessional employees and volunteer personnel may be assigned within the limitations of their competency to assist with classroom instruction as personally supervised by the professional administrative and teaching staff. Such assistance shall not include the continuing day-to-day responsibility for teaching a particular academic subject or group of pupils in the role ordinarily ascribed to a teacher.

Section 2. In the event a local board of

education is unable to fully staff an athletic program with qualified [certified] personnel under 702 KAR 7:090 Sections 1 and 2, the local district superintendent may request annual approval from the Superintendent of Public Instruction for an alternative staffing arrangement for noncertified paraprofessionals performing routine, noncoaching assignments, pursuant to 702 KAR 7:090, Section 2(2). Appropriate justification shall be submitted in writing on forms provided by the head of the Office [Bureau] of Instruction. [As long as a paraprofessional is acting within the scope of authority as set forth in this regulation and KRS 161.010 and 161.044, he/she may assist coaches.]

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Laurel True

(1) Type and number of entities affected: 180 school districts (boards of education)

(a) Direct and indirect costs or savings to those affected: The amendment is permissive, therefore, decisions relating to cost would be made by local boards of education..

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Paperwork will decrease.

(2) Effects on the promulgating administrative body: The amendment is permissive, therefore, decisions relating to cost would be made by local boards of education.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork will decrease.

(3) Assessment of anticipated effect on state and local revenues: Minimum effect on local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N.A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Tiering not applied since this regulation is permissive for local boards of education.

EDUCATION AND HUMANITIES CABINET  
Department of Education  
Office of Instruction  
(Proposed Amendment)

704 KAR 20:005. Kentucky standards for preparation program approval.

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025 gives the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rests the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities, and where applicable, these curriculum standards are consistent with the Program of Studies as incorporated in 704 KAR 3:304.

Section 1. Pursuant to the statutory authority placed upon the Superintendent of Public Instruction, the State Board of Education, and the Kentucky Council on Teacher Education and Certification under KRS Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation-Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel are hereby amended [by the selective revision of certain standards, the deletion of certain standards, and by the addition of other new standards], and the amended document is hereby incorporated by reference and identified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised May, 1985 [July, 1984]. A copy of this document can be obtained from the Office of Instruction, Department of Education, Capital Plaza Tower, Frankfort, Kentucky.

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations

adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sidney Simandle

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No change

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Revises the selection of courses required for the teaching specialties of the certification program for middle grade teachers.

Tiering:

Was tiering applied? Not applicable in a uniform state-wide system of teacher certification.

EDUCATION AND HUMANITIES CABINET  
Department of Education  
Office of Instruction  
(Proposed Amendment)

704 KAR 20:235. Learning and behavior disorders; teacher's provisional certificate.

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding

to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate provisional certificate for teaching exceptional children with learning and behavior disorders and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for teachers of exceptional children - learning and behavior disorders shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

[(2) Effective until December 31, 1984 the provisional certificate for teachers of exceptional children - learning and behavior disorders shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth-year program.]

[(2) [(3) Effective January 1, 1985,] The provisional certificate for teachers of exceptional children - learning and behavior disorders shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

[(3) [(4)] The provisional certificate for teachers of exceptional children - learning and behavior disorders shall be valid at any grade level for the instruction of exceptional children with learning and behavior disorders and as a provisional elementary certificate valid for classroom teaching in grades one (1) through eight (8).

[(4) [(5)] For a person who qualifies before the deadline date of September 1, 1986 [1984], the provisional certificate for teachers of exceptional children - learning and behavior disorders shall be issued for a one (1) year period to an applicant who holds the provisional elementary certificate or any other certificate of similar validity for elementary classroom teaching and who has completed at least six (6) semester hours credit from the special education component of the approved curriculum. As a prerequisite, the certification application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position. The certificate may be renewed for no more than three (3) subsequent one (1) year periods upon completion of a minimum of six (6) semester hours additional credit each year after which

time the teacher must qualify by having completed the entire curriculum. Three (3) years of teaching experience performed under a succession of one (1) year certificates in a full-time position requiring LBD certification shall be substituted for the special education portion of the student teaching requirement.

[(5) [(6)] For a person who qualifies before the deadline date of September 1, 1986 [1984], the provisional certificate for teachers of exceptional children - learning and behavior disorders, valid for grades seven (7) through twelve (12), may be issued for a one (1) year period to an applicant who holds the provisional high school certificate or any other certificate of similar validity for secondary classroom teaching and who has completed at least six (6) semester hours of credit from the major in exceptional children - learning and behavior disorders and a three (3) semester hour course in reading. As a prerequisite, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position. The certificate may be renewed for subsequent one (1) year periods upon completion of at least six (6) semester hours of credit each year from the approved curriculum. Three (3) years of teaching experience performed under a succession of one (1) year certificates in a full-time position requiring LBD certification shall be substituted for the special education portion of the student teaching requirement.

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sidney Simandle

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: Not applicable

2. Continuing costs or savings: Not applicable

3. Additional factors increasing or decreasing costs (note any effects upon competition): Not applicable

(b) Reporting and paperwork requirements: No change; relates to curriculum differences for teacher certification

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change; relates to curriculum differences for teacher certification

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Revision is made to help alleviate an anticipated shortage of special education teachers

Tiering:

Was tiering applied? No. Not applicable in a uniform state-wide system of teacher certification.

**EDUCATION AND HUMANITIES CABINET**  
Department of Education  
Office of Vocational Education  
(Proposed Amendment)

705 KAR 1:010. Three year [Annual] program plan.

RELATES TO: KRS 156.010, 156.035, 163.020, 163.030

PURSUANT TO: KRS [13.082,] 156.035, 156.070, 163.030

NECESSITY AND FUNCTION: KRS 156.010 designates the Department of Education as the sole state agency for developing and approving state plans required by federal law as prerequisites to receiving federal funds for vocational education; KRS 156.035 authorizes the State Board of Education to implement any act of Congress appropriating and apportioning funds to the state and to provide for the proper disbursement of such funds; KRS 163.020 accepts and agrees to comply with federal vocational education acts; and KRS 163.030 gives the State Board authority to comply with state and federal vocational education laws. The 1986-88 [1985] Kentucky Three Year [Annual] Program Plan [and 1983 Accountability Report] for Vocational Education is necessary in order to be eligible to receive federal funds under P.L. 98-524 [94-482], and this regulation formally adopts such plan developed and approved by the Department of Education.

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education, the 1986-88 [1985] Kentucky Three Year [Annual] Program Plan [and 1983 Accountability Report] for Vocational Education is hereby [shall be] prepared and approved by the State Board of Education, in accordance with the appropriate federal guidelines, and submitted to the U.S. Secretary of Education [by June 30, 1984] for approval. This document is incorporated by reference and hereinafter shall be referred to as the 1986-88 [1985] Kentucky Three Year

[Annual] Program Plan [and 1983 Accountability Report] for Vocational Education. Copies of the document may be obtained from the Office [Bureau] of Vocational Education, State Department of [for Occupational] Education.

ALICE McDONALD, Superintendent

APPROVED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capitol Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James A. White

(1) Type and number of entities affected: 180 school districts, 14 vocational regions, 20 community colleges and universities.

(a) Direct and indirect costs or savings to those affected: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Three Year Program Plan.

(3) Assessment of anticipated effect on state and local revenues: Will meet regulations required to obtain \$13.5 million Federal Grant.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes.

**EDUCATION AND HUMANITIES CABINET**  
Department of Education  
Office of Vocational Rehabilitation  
(Proposed Amendment)

706 KAR 1:020. Independent living plan.

RELATES TO: KRS 156.010, 156.035, 163.140, 163.110, 163.120, 163.130, 163.160

PURSUANT TO: KRS 156.035, 156.070, [13.082, 156.112, 156.116,] 163.140

NECESSITY AND FUNCTION: Title VII, Part A, P.L. 93-112, as amended, requires the submission of a [an Interim] Three (3) Year State Plan for Independent Living Rehabilitation Services, to the Secretary, Department of [Health,] Education [and Welfare]. The plan must be approved in order for a state to be eligible for grants from the allotment of funds under Title VII, Part A, of the Rehabilitation Act of 1973, P.L. 93-112, as amended by P. L. 93-516, P. L. 95-602 and P. L. 98-221. This regulation adopts such a plan, and thereby implements statutory responsibility of the Department of Education and the State Board of Education under KRS 156.010, 156.035, 163.140, and 163.160.

Section 1. Pursuant to the authority vested in the Kentucky State Board of [for Occupational] Education by KRS 156.035 and 163.140, [156.116] the Kentucky State Plan for Independent Living Rehabilitation Services [incorporated in P.L. 93-112, as amended,] for the period October 1, 1984 [1979] through September 30, 1987 [1982] is presented herewith for filing with the Legislative Research Commission, and incorporated by reference. This plan describes how federal funds will be utilized to provide services for independent living to individuals with disabilities so severe that they presently do not have potential for employment, and a copy of said plan can be obtained from the Office of Vocational Rehabilitation, Department of Education.

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kathy Williams

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: Regulations pertain to independent living rehabilitation services provided to Kentuckians with severe disabilities. At this time we cannot estimate the number of persons who will be served

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements

(2) Effects on the promulgating administrative body: Monies for this program are based on 90/10 match with the United States Department of Education, Rehabilitation Services Administration

(a) Direct and indirect costs or savings:

1. First year: There will be no cost to this office as program funded by federal government and matching funds provided by Cabinet for Human Resources, Department for Mental Health/Mental Retardation, Division of Mental Health

2. Continuing costs or savings: Not known at this time

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The additional filing and completion of application and individualized written rehabilitation program

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives possible per KRS Chapter 13A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. This regulation concerns independent living rehabilitation services to Kentuckians with severe disabilities. Tiering is not applicable when regulations pertain to individuals.

#### EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Federal Programs

(Proposed Amendment)

709 KAR 1:070. Minimum standards of admission for long-term adult students in vocational programs.

RELATES TO: KRS 163.030

PURSUANT TO: KRS 156.070, 163.030

NECESSITY AND FUNCTION: KRS 163.030 vests the State Board of Education with authority to carry out the purposes of the state's vocational education program and adopted federal acts relative thereto. The purpose of this regulation is to establish minimum entrance requirements for students entering vocational programs, to establish a base for determining if students may receive advanced placement, to assist in developing remedial plans for students who need help in meeting minimum admission requirements, and to determine if a student needs additional assessment.

Section 1. The following minimum requirements shall apply to those schools offering training to students who have graduated or left high school and are enrolled in an occupational preparation program of 500 hours or more in length that does not lead to an associate degree:

(1) Students enrolling in a vocational school postsecondary program must be sixteen (16) years of age or older;

(2) Students enrolling must have successfully completed requirements for a high school diploma or its equivalent. Students who do not possess a high school diploma or its equivalent may be admitted with special status provided the

student agrees to pursue the high school equivalency certificate;

(3) Students enrolling must complete an application form and provide a transcript of previous school work completed, including scale scores on the Comprehensive [California] Test of Basic Skills (CTBS) if taken in the last three (3) years;

(4) Students enrolling who do not have a transcript and/or CTBS scale scores must take the Test of Adult Basic Education (TABE). Students not having acceptable CTBS scale scores for program admission may take the TABE;

(5) Students may be admitted to the school upon completion of application, required records, and test results and may pursue instruction in a basic academic skills program, career exploration, core elective courses, and modified/special programs for handicapped; and

(6) The Kentucky Department of Education does not discriminate on the basis of race, color, national origin, marital status, age, sex, or handicap.

Section 2. Students who have been admitted to the school must meet admission standards for the occupational program. The following minimum requirements shall apply to all students:

(1) Scale scores from California Test of Basic Skills (CTBS), Form U, or Test of Adult Basic Education (TABE), Form D, will be used in program placement and in developing a plan for students who need help in remedial work to meet minimum program admission requirements.

(2) Students must have the following scale scores for admission to a vocational program not otherwise mentioned:

	CTBS	TABE
Reading	725	479
Math	717	504

Students who score below said minimum will be referred to a remediation program [the Learning Resource Center] prior to admission to the occupational program. Students achieving the minimum basic skills in the remediation program [Learning Center] will be admitted to the occupational program when a work station is available.

(3) Students who have the following scale scores must be enrolled in math and reading programs [at the school] to improve their skills. Enrollment may be concurrent with or prior to enrollment in the program.

	CTBS	TABE
Reading	725 to 770	479 to 574
Math	717 to 732	504 to 581

(4) Students enrolling in Air Craft Mechanics, Biomedical Technician, Electronics, Instrumentation, and Drafting must have the following scale scores to be admitted to the program:

	CTBS	TABE
Reading	753	542
Math	726	544

(5) Students enrolling in Practical Nursing,

Radiologic Technology, Respiratory Therapy, Surgical Technology, and Civil and Highway Technology must have the following scale scores to be admitted to the program:

	CTBS	TABE
Reading	770	574
Math	732	581

(6) Students enrolling in Biomedical Equipment Technician, Medical Assistant, Mine Maintenance, Practical Nurse, Radiologic Technology, Respiratory Therapy, and Surgical Technology must be seventeen (17) years of age or older.

(7) Students enrolling in Heavy Equipment Operator, Heavy Equipment Maintenance, and Mine Equipment Operator must be eighteen (18) years of age or older.

(8) Students enrolling in Mine Equipment Operator must complete forty-eight (48) hour Mine Safety Training Program before entering the simulated mine.

(9) Students enrolling in Heavy Equipment Operator and Heavy Equipment Maintenance must have a valid driver's license.

Section 3. The following minimum requirements shall apply to those students requesting to transfer credit and be admitted with advanced standing from other vocational schools or other institutions accredited by an educational agency recognized by the Kentucky Department of Education:

(1) The student must supply the name and address of all previous institutions that provided vocational training;

(2) The student must provide a record of competencies achieved, length of training, date of enrollment, and date of termination from each institution. The receiving school may validate competencies through testing and interviewing; and

(3) The student must provide all records and reports which are required by the state boards and/or licensing agencies in a given vocational program.

Section 4. This regulation [shall be effective on a pilot basis for Rowan State Vocational-Technical School and the Northern Kentucky State Vocational-Technical School during the 1984-85 school year, but] shall be implemented in [effective for] all state[-operated] vocational[-technical] schools and health facilities, except correctional institutions, in the 1985-86 school year and thereafter, and, with the cooperation of state and regional vocational advisory committees, piloted in 1985-86 in a minimum of five (5) area vocational education centers serving postsecondary students.

ALICE McDONALD, Superintendent

ADOPTED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of

Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Audrey Carr

(1) Type and number of entities affected: 17 state vocational-technical schools, 5 health facilities and a minimum of 5 area centers.

(a) Direct and indirect costs or savings to those affected:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Does increase some front-end paperwork on the part of admissions officers, but most of the work will be handled by increasing use of computer programs

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The agency feels it is critical to have entrance requirements for adult students which are standardized across the state

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (Proposed Amendment)

#### 804 KAR 4:250. Special temporary licenses.

RELATES TO: KRS 243.260, 243.290

PURSUANT TO: KRS 241.060

NECESSITY AND FUNCTION: KRS 243.260 provides for the issuance of a distilled spirits and wine special temporary license to any regularly organized fair, exposition, racing association or other party, "when in the opinion of the board a necessity therefor exists." KRS 243.290 provides for the issuance of a malt beverage special temporary license for any regularly organized fair, race or race meeting conducted by the association, or for special temporary occasions such as picnics, bazaars and carnivals subject to regulations. This regulation is adopted to insure consistency in the issuance of these special temporary licenses and insure the legal use thereof.

Section 1. All applications for special temporary licenses pursuant to KRS 243.260 or 243.290 shall be on forms provided by the Department of Alcoholic Beverage Control and shall be filed with the department no later than five (5) [fifteen (15)] days prior to the date for which license is requested.

Section 2. An applicant for a special temporary license pursuant to KRS 243.260 and 243.290 shall provide by a sworn affidavit such supplemental information as the Alcoholic Beverage Control Board shall deem necessary for proper review of the application.

Section 3. For purposes of the issuance of special temporary license pursuant to KRS 243.260 and 243.290, necessity in the opinion of the board shall limit applicants to: any regularly organized fair, exposition, racing association or non-profit organization, political campaign function or any for-profit individual, corporation, or organization when used in conjunction with an organized charitable, civic, or community sponsored event.

EDWARD A. FARRIS, Commissioner

MELVIN WILSON, Secretary

APPROVED BY AGENCY: May 10, 1985

FILED WITH LRC: May 10, 1985 at 2:30 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on the above proposed regulation amendment will be held on Wednesday, June 26, 1985, at 10 a.m. in the hearing room of the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky. Unless requests for a public hearing are received, in writing, five (5) working days before the hearing date, the public hearing will be cancelled. Those who may be interested in attending, please contact: Bonnie H. Hall, Secretary to the Board, Alcoholic Beverage Control Board, 123 Walnut, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward A. Farris

(1) Type and number of entities affected: N/A

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation



with conflicting provisions:

(6) Any additional information or comments: N/A

Tiering:

Was tiering applied? No. Not applicable.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Mines and Minerals**  
**(Proposed Amendment)**

805 KAR 1:030. Well location plat, preparation, form and contents.

RELATES TO: KRS 353.550, 353.590

PURSUANT TO: KRS 13A.100 [13.082], 353.550, 353.560

NECESSITY AND FUNCTION [KRS 353.550 and 353.560 requires the Department of Mines and Minerals to regulate the preparation and filing of well location plats.] This [proposed] regulation is intended to assure compliance with KRS 353.550 and 353.560 in establishing requirements for uniformity and clarity in well locations and identity.

Section 1. This regulation applies only to the oil- and gas-producing industry and applies neither to transmission and/or distribution systems nor to product storage facilities.

Section 2. [1.] Location plats for wells proposed to be drilled pursuant to [under] the provisions of KRS Chapter 353 shall be prepared and certified as accurate and correct by a licensed Kentucky land surveyor, provided that when the location of the well is known to be underlain by coal bearing stratum, such plat shall be prepared by a licensed land surveyor and certified by an engineer registered in Kentucky. If any plat submitted by an applicant is determined by the department to be materially inaccurate or incomplete, the department may require that a new plat be prepared and submitted. [The department may further require that all future plats submitted by such applicant be prepared by a licensed Kentucky land surveyor or a Kentucky registered engineer approved by the director.]

Section 3. No person shall drill a well for oil or gas within 150 feet of any building, unless a waiver of objection to such drilling is secured in the manner established below, or unless the department, after notice and hearing, determines that the drilling and production of the well is not violative of the public policy set out in KRS 353.500. The surveyor preparing the plat for a permit shall indicate the location of a proposed well site relative to all buildings within 150 feet of said well site. If an owner of a building located within 150 feet of a proposed well site waives objection to a well's being located closer than 150 feet to such building, a copy of the executed agreement of waiver shall accompany the application for permit.

Section 4. [2.] A separate location plat shall be submitted with each application to drill, deepen or reopen a well.

Section 5. [3.] Location plats for wells proposed to be drilled pursuant to [under] the

provisions of KRS Chapter 353 shall be prepared in the following manner:

(1) All plats shall be clearly legible and submitted on a sheet eight and one-half (8 1/2) by fourteen (14) inches. This sheet may be bond paper, tracing cloth, tracing paper or equivalent.

(2) The location of the proposed well shall be shown relative to the two (2) nearest boundaries of oil and gas ownership (including any subdivision of the lease) [, and to the nearest producing well (if within 1,000 feet of the proposed well)]. Such plats shall also indicate all producing wells and permitted well sites within 1,000 feet of the proposed well site. The distances shall be clearly shown in feet.

(3) The location of the proposed well shall be shown on the plat, by bearing and distance, relative to two (2) permanent points/monuments that appear on the applicable USGS 7 1/2' Topographic Quadrangle Map, which permanent points/monuments include though are not limited to road intersections, bench marks, and buildings. A photocopy of a portion of such topographic quadrangle map showing the proposed well site shall be acceptable in lieu of identifying such points/monuments on the plat [(landmarks or monuments) by bearing and distance].

(4) [The plat shall include a diagram or description sufficient to enable the Department of Mines and Minerals to locate the proposed well site on a 7 1/2' quadrangle topographic map, scale one (1) to 24,000.] The location of the well site shall be prepared with reference to [diagram or description shall be prepared with use of] either the Carter coordinate system, latitude and longitude, or the Kentucky coordinate system.

(5) The elevation of the well site shall be determined by instrument and calculation. Estimated topographic elevations shall not be acceptable.

(6) [(5)] The plat shall be prepared to a scale of one (1) inch equals 100, 200, 300, 400, 500 or 600 feet.

Section 6. [4. Location plats] In addition to the data required in Section 5 [3] of this regulation, location plats shall [also] include the following information:

(1) Operator.

(2) Farm or lease name.

(3) Well number.

[(4) Elevation of well (by instrument). The method of determining such elevation shall be noted.]

(4) [(5)] County.

(5) [(6)] Scale at which the plat is drawn.

(6) [(7)] North direction.

(7) Legend:

○ - proposed well site

● - oil well

☼ - gas well

◎ - injection well

⊕ - plugged well

⊗ - abandoned well, not plugged

- (8) Date of preparation of plat.  
 (9) Name of the topographic quadrangle map [quadrangle topographic map (7 1/2')] on which the well site may be located.  
 (10) Owners, lessors and lessees of oil and gas on [tract or] tracts which are offset by the proposed well.  
 (11) Certification in the following form: "I hereby certify that the above plat is accurate and correct and satisfies the requirements of 805 KAR 1:030 to the best of my knowledge and belief."  
 (12) Certification shall be followed by the written signature of the person preparing said plat, his/her mailing address, [and] registration number, and telephone number.

MELVIN H. WILSON, Secretary  
 WILLARD STANLEY, Commissioner  
 APPROVED BY AGENCY: May 10, 1985

FILED WITH LRC: May 14, 1985 at 1 p.m.  
 PUBLIC HEARING SCHEDULED: A public hearing regarding the proposed amendment of this regulation will be held in Room 103 of the Capitol Annex, Frankfort, Kentucky, on Thursday, June 27, 1985, at 10 a.m., prevailing local time. Any person interested in attending such hearing shall notify in writing at least five (5) days before the hearing: Eugene D. Attkisson, General Counsel, Department of Mines and Minerals, P.O. Box 680, Lexington, Kentucky 40586. Absent such notification, the hearing may be cancelled.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugene D. Attkisson

- (1) Type and number of entities affected:  
 (a) Direct and indirect costs or savings to those affected:  
 1. First year: N/A  
 2. Continuing costs or savings: N/A  
 3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A  
 (b) Reporting and paperwork requirements: N/A  
 (2) Effects on the promulgating administrative body:  
 (a) Direct and indirect costs or savings:  
 1. First year: N/A  
 2. Continuing costs or savings: N/A  
 3. Additional factors increasing or decreasing costs: N/A  
 (b) Reporting and paperwork requirements: N/A  
 (3) Assessment of anticipated effect on state and local revenues: N/A  
 (4) Assessment of alternative methods; reasons why alternatives were rejected: N/A  
 (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A  
 (a) Necessity of proposed regulation if in conflict:  
 (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:  
 (6) Any additional information or comments:

Tiering:  
 Was tiering applied? Yes

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals (Proposed Amendment)

#### 805 KAR 3:020. General standards.

RELATES TO: KRS 351.070  
 PURSUANT TO: KRS 13A.100 [13.082], 351.070  
 NECESSITY AND FUNCTION: This regulation establishes [is to establish] general operating safety standards controlling the operation of the Commonwealth's surface [type] coal and clay mines, which include strip and auger mining operations.

Section 1. General Standards for Coal and Clay Mines. (1) Each mine shall be under the supervision of a foreman certified under conditions set forth by the department [pursuant to KRS 351.070(12)]. Where operations are so extensive that the foreman cannot personally visit all the mine workings, he/she shall employ certified assistants who shall be subject to the same requirements as the foreman.

(2) Each place of work shall be visited by a certified foreman or his/her assistant at the beginning of and at least once each shift and more frequently as necessary to ensure that work is being done in a safe manner.

(3) No employe shall be assigned, allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his/her safety unless he/she can communicate with others, can be heard or can be seen.

(4) When work is performed after dark, the areas of drilling, blasting, stripping, and loading shall be properly illuminated.

(5) A certified person shall be in charge at all times when the mine is in operation [men are working].

(6) Where telephone service is not available, emergency communications shall be provided to the nearest point of assistance.

(7) Arrangements shall be made in advance for obtaining emergency medical assistance and transportation for injured persons.

WILLARD STANLEY, Commissioner  
 MELVIN H. WILSON, Secretary

APPROVED BY AGENCY: May 1, 1985  
 FILED WITH LRC: May 1, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing regarding the proposed amendment of this regulation will be held in Room 103 of the Capitol Annex, Frankfort, Kentucky on Thursday, June 27, 1985, at 10 a.m., prevailing local time. Any person interested in attending such hearing shall notify in writing at least five (5) days before the hearing: Eugene D. Attkisson, General Counsel, Department of Mines and Minerals, P. O. Box 680, Lexington, Kentucky 40586. Absent such notification, the hearing may be cancelled.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugene D. Attkisson, General Counsel

- (1) Type and number of entities affected:  
 (a) Direct and indirect costs or savings to those affected:  
 1. First year: Not applicable.  
 2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Not applicable.

(b) Reporting and paperwork requirements: Not applicable.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: Not applicable.

(3) Assessment of anticipated effect on state and local revenues: Not applicable.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Mines and Minerals**  
**(Proposed Amendment)**

**805 KAR 7:010. Definitions.**

RELATES TO: KRS 351.102, 351.103, [351.104,] 351.105 [, 351.106]

PURSUANT TO: KRS 13A.100 [13.082], 351.106

NECESSITY AND FUNCTION: KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable regulations as are necessary to establish programs for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education, and Certification. This regulation effects the provisions of that statute [law].

Section 1. Definitions. For purposes of 805 KAR 7:010 to 805 KAR 7:050, the following terms shall have the following meanings unless the context demands otherwise:

(1) "Board" means the Board of Miner Training, Education, and Certification.

(2) "Certified person" means any person certified by the commissioner to perform particular work duties in and around an underground coal mine.

(3) "Commissioner" means the Commissioner of the Department of Mines and Minerals.

(4) "Department" means the Department of Mines and Minerals.

(5) "Experienced miner" means any person having worked a minimum of ninety (90) working days in an underground coal mine [prior to the date when the miner training program goes into effect as determined by the board pursuant to KRS 351.104(1)].

(6) "Inexperienced miner" means any person not having worked a minimum of ninety (90) days in

an underground mine [prior to the date when the miner training program goes into effect as determined by the board pursuant to KRS 351.104(1)].

(7) "Newly hired miner" means any miner, experienced or inexperienced, who is hired by an operator to work in an underground coal mine [after the date when the miner training program goes into effect as determined by the board pursuant to KRS 351.104(1)].

(8) "New work assignment" means any delegation of work duties in mobile equipment operations, blasting and drilling operations, rail haulage and conveyor system operations, or roof control [for] which a miner is not qualified to perform pursuant to [the provisions of] 805 KAR 7:010 to [through] 805 KAR 7:050.

(9) "Operator" means an individual, firm or corporation operating a coal mine or any part thereof.

(10) "Normal work shift" means the equivalent of eight (8) hours.

Section 2. For purposes of 805 KAR 7:010 to 805 KAR 7:050, any person receiving training throughout a normal work shift shall be deemed to have received eight (8) hours of training.

WILLARD STANLEY, Commissioner

MELVIN H. WILSON, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing regarding the proposed amendment of this regulation will be held in Room 103 of the Capitol Annex, Frankfort, Kentucky on Thursday, June 27, 1985, at 10 a.m., prevailing local time. Any person interested in attending such hearing shall notify in writing at least five (5) days before the hearing: Eugene D. Attkisson, General Counsel, Department of Mines and Minerals, P. O. Box 680, Lexington, Kentucky 40586. Absent such notification, the hearing may be cancelled.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Eugene D. Attkisson, General Counsel

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No change.

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: No change.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in

conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Mines and Minerals**  
**(Proposed Amendment)**

**805 KAR 7:020. Training and certification of inexperienced miners.**

RELATES TO: KRS 351.102, 351.105

PURSUANT TO: KRS 13A.100 [13.082], 351.106

NECESSITY AND FUNCTION: KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This regulation effects the provisions of that statute [law].

Section 1. Training and Certification of Inexperienced Miners. (1) A permit as trainee miner shall be issued by the commissioner to any person who has completed a program of education and training that meets all of the requirements of this regulation and consists of a minimum of forty-eight (48) hours or who is enrolled in a certified mine technology program.

(2) This training may be received through the Bureau of Vocational Education, mine company programs, private or public institutions of education or any program certified by the board as meeting the requirements of this regulation.

(3) Upon proof that an inexperienced miner has received the course of instruction set forth in this regulation within twelve (12) months preceding initial employment at a mine, such miner need not repeat the training specified in this regulation.

Section 2. Training Program. The training program for inexperienced miners shall include, but not be limited to, the following courses:

(1) Self-rescue devices: the course shall include instruction in the use, care and maintenance of self-rescue devices. This course shall be given before the inexperienced miner visits, tours or goes underground.

(2) Introduction to mining: the introduction to mining course should include a visit and tour of a mine or portions of a mine which are representative of the entire mine. The method of mining utilized at the mine (that is conventional, continuous, longwall or other) should be observed and explained.

(3) Authority and responsibility of supervisors: the course shall include review and description of the line of authority of supervisors and the responsibilities of such supervisors, and an introduction to rules and proper procedures for reporting safety hazards.

(4) Entering and leaving mines, [;] transportation, communications: the course shall

include instruction in the procedures in effect for entering and leaving mines, the check-in and check-out systems in effect at mines, the procedures for riding on and in mine conveyances, the controls in effect for transportation of miners and materials, and the use of mine communication systems, warning signals and directional signs.

(5) Mine map, escapeways, emergency evacuations, barricading: the course shall include a review of mine maps, the escapeway systems, the escapes, firefighting and emergency evacuation plans in effect at mines, the location of abandoned and dangerous areas, and an introduction to methods of barricading and the locations of barricading materials.

(6) Roof control and ventilation plans: the course shall include an introduction to and instruction on the roof control plans in effect within the mining industry, and procedures for roof and rib control, and introduction to and instruction on the ventilation plans in effect within the mining industry, and the procedures for maintaining and controlling ventilation.

(7) Rock dusting: the course shall include instruction on the purpose of rock dusting and the rock dusting programs in effect within the mining industry.

(8) First-aid: the course of instruction shall consist of a course in first-aid methods.

(9) Electrical hazards, [;] moving equipment: the course shall include instruction on recognition and avoidance of electrical hazards, and the procedures for working on and near moving equipment at all locations in mines.

(10) Prevention of accidents: the course shall include instruction on the prevention of all types of accidents including electrical and mechanical.

(11) Explosives: the course shall include review and instruction on the hazards related to explosives and the danger involved when working with and around such explosives.

(12) Health and safety standards: the course shall include the health and safety standards contained in KRS Chapters 351 and 352 and the Federal Mine Safety and Health Act of 1977 (P.L. 95-164) [Part 75 of the Federal Coal Mine Health and Safety Act of 1969].

(13) The training program shall include all other substantive mine safety law not covered in the above courses that deals with the underground miner, including review and instruction of miners' and operators' statutory rights and obligations with regard to mine safety law.

WILLARD STANLEY, Commissioner

MELVIN H. WILSON, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing regarding the proposed amendment of this regulation will be held in Room 103 of the Capitol Annex, Frankfort, Kentucky on Thursday, June 27, 1985, at 10 a.m., prevailing local time. Any person interested in attending such hearing shall notify in writing at least five (5) days before the hearing: Eugene D. Attkisson, General Counsel, Department of Mines and Minerals, P. O. Box 680, Lexington, Kentucky 40586. Absent such notification, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugene D. Attkisson,  
General Counsel

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No change.

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: No change.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Mines and Minerals**  
**(Proposed Amendment)**

**805 KAR 7:030. Annual retraining program.**

RELATES TO: KRS 351.105

PURSUANT TO: KRS 13A.100 [13.082], 351.106

NECESSITY AND FUNCTION: KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This regulation effects the provisions of that statute [law].

Section 1. Annual Retraining Program. (1) All certified persons shall receive a minimum of sixteen (16) hours of annual retraining.

(2) The annual retraining program set forth in this regulation shall be administered to each certified person during the first full calendar year subsequent to the date on which the certified person received his certification and during every calendar year thereafter.

(3) The annual retraining program shall include but not be limited to the following courses of instruction:

(a) Transportation controls and communications systems: the course shall include instruction in procedures for riding on and in mine

conveyances, the controls in effect for the transportation of miners and material, and the use of the mine communication system, warning signals and directional signs.

(b) Barricading: the course shall include instruction and review of the methods of barricading and locations of barricading materials.

(c) Roof control and ventilation plans: the course shall include instruction and review of the roof control plan in effect at the mine and the procedures for roof and rib control, and instruction and review of the ventilation plan in effect at the mine and the procedures for maintaining ventilation and control of ventilation.

(d) First-aid: the course shall include instruction and review of first-aid methods.

(e) Electrical hazards, moving equipment: the course shall include instruction on recognition and avoidance of electrical hazards and procedures for working on and near moving equipment throughout the mine.

(f) Accident prevention: the course shall include instruction and review of the prevention of accidents, both electrical and mechanical.

(g) Self-rescue devices: the course shall include instruction in the use, care and maintenance of self-rescue devices.

(h) Explosives: the course shall include review and instruction on the hazards related to explosives and instruction in procedures for the safe handling and use of explosives.

(i) Health and safety standards: instruction shall be given on health and safety standard requirements contained in KRS Chapters 351 and 352 the Federal Mine Safety and Health Act of 1977 (P.L. 95-165) as such requirements [and Part 75 of the Federal Coal Mine Health and Safety Act of 1969 which] are related to the tasks and work assignments of each miner.

Section 2. Annual retraining programs for certified persons may be conducted at various times throughout the calendar year, but no session shall be less than thirty (30) minutes of actual instruction time and the persons to be instructed shall be notified that the session is part of the annual retraining.

[Section 3. The operator shall annually verify in the form of an affidavit to the department that each certified person in his employ has received the minimum sixteen (16) hours of annual retraining as required by this regulation. Such affidavit shall state the dates on which the annual training sessions were conducted and the names and corresponding social security numbers of those persons, including persons no longer in the employ of the operator, receiving the annual retraining; provided, however, that no person shall be required to disclose his social security number for purposes of this affidavit. In the event that a person who has received the annual retraining refuses to disclose his social security number, the operator shall make a notation to that effect in the affidavit in lieu of stating that person's social security number.]

Section 3. [4]. Willful failure of a certified person to attend a minimum of sixteen (16) hours of annual retraining shall constitute grounds for revocation, suspension, or probation of the

certificate, in accordance with KRS 352.370.

WILLARD STANLEY, Commissioner  
MELVIN H. WILSON, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing regarding the proposed amendment of this regulation will be held in Room 103 of the Capitol Annex, Frankfort, Kentucky, on Thursday, June 27, 1985, at 10 a.m., prevailing local time. Any person interested in attending such hearing shall notify in writing at least five (5) days before the hearing: Eugene D. Attkisson, General Counsel, Department of Mines and Minerals, P. O. Box 680, Lexington, Kentucky 40586. Absent such notification, the hearing may be cancelled.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugene D. Attkisson

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No change

2. Continuing costs or savings: No change

3. Additional factors increasing or decreasing costs (note any effects upon competition): No change

(b) Reporting and paperwork requirements: No change

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change

2. Continuing costs or savings: No change

3. Additional factors increasing or decreasing costs: No change

(b) Reporting and paperwork requirements: No change

(3) Assessment of anticipated effect on state and local revenues: No change

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: none

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals (Proposed Amendment)

805 KAR 7:040. Training of newly hired miners.

RELATES TO: KRS 351.105

PURSUANT TO: KRS 13A.100 [13.082], 351.106

NECESSITY AND FUNCTION: KRS 351.106 provides that the Commissioner of the Department of Mines and Minerals shall promulgate such reasonable regulations as are necessary to establish and implement a program of miner training and examination according to the criteria and standards established by the Board of Miner

Training, Education, and Certification pursuant to KRS Chapter 351. This regulation effects the provisions of that statute [law].

Section 1. Training of Newly Hired Miners. (1) Each newly hired miner, whether experienced or inexperienced, shall receive a minimum of eight (8) hours training provided by the mine operator in mine specifics as applied to the particular mine wherein the miner is to be employed.

(2) Such training shall include instruction in the courses set forth in 805 KAR 7:020, Section 2 (2), (3), (4), (5), (6), (7), and (9), and shall be completed before the newly hired miner can be assigned any work duties.

[(3)] The operator shall verify in the form of an affidavit to the Department that the newly hired miner has received the eight (8) hours training in mine specifics required by this regulation.]

[(3)] [(4)] Upon proof by an operator that a rehired experienced miner has received the training set forth in this regulation within twelve (12) months preceding re-employment at the mine, such miner need not repeat the training set forth in this regulation.

WILLARD STANLEY, Commissioner

MELVIN H. WILSON, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing regarding the proposed amendment of this regulation will be held in Room 103 of the Capitol Annex, Frankfort, Kentucky, on Thursday, June 27, 1985, at 10 a.m., prevailing local time. Any person interested in attending such hearing shall notify in writing at least five (5) days before the hearing: Eugene D. Attkisson, General Counsel, Department of Mines and Minerals, P. O. Box 680, Lexington, Kentucky 40586. Absent such notification, the hearing may be cancelled.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugene D. Attkisson

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No change

2. Continuing costs or savings: No change

3. Additional factors increasing or decreasing costs (note any effects upon competition): No change

(b) Reporting and paperwork requirements: No change

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change

2. Continuing costs or savings: No change

3. Additional factors increasing or decreasing costs: No change

(b) Reporting and paperwork requirements: No change

(3) Assessment of anticipated effect on state and local revenues: No change

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: none

(a) Necessity of proposed regulation if in

conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Mines and Minerals**  
**(Proposed Amendment)**

**805 KAR 7:050. Training of miners for new work assignments.**

RELATES TO: KRS 351.105

PURSUANT TO: KRS 13A.100 [13.082], 351.106

NECESSITY AND FUNCTION: KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This regulation effects the provisions of that statute [law].

Section 1. Training of Miners for New Work Assignments. (1) Each miner receiving new work assignments requiring the direct operation of mechanical or electrical machinery or equipment in connection with mobile equipment operations, blasting and drilling operations, rail haulage and conveyor system operations, and roof control shall not perform such work duties until he/she has [they have] completed a program of training as provided in this regulation of a minimum of twenty (20) hours as specified in KRS 351.105.

(2) Such [This] minimum [total] of twenty (20) hours training shall be provided as follows: [distributed into a minimum of] eight (8) hours of observing the operation in which the new work assignment is to be made, eight (8) hours of a combination of instruction and practice in such new work assignment, and four (4) hours in production under supervision.

(3) The training program shall include, but not be limited to, the following:

(a) Safe operation procedures for existing, modified, or new equipment or machines: this training shall include instruction in the safe operating procedures related to the equipment or machine. Instruction shall be given by the immediate supervisor or experienced person in an on-the-job environment, and shall be taught from a safe operating procedures checklist developed specifically for the equipment or machine. A copy of the checklist shall be given to each equipment or machine operator at the time of instruction.

(b) Supervised practice during non-production: this training shall include supervised practice in operating equipment or a machine and performing work duties at mines or places where production is not the primary objective. The equipment or machine operator shall practice the operation of the equipment or machine under direct supervision of the immediate supervisor or experienced person until such time as sufficient practice has taken place to ensure the operation of the equipment or machine in a safe manner.

(c) Supervised practice during production: this training shall include supervised operation of the machine or equipment and performing work duties under the direct and immediate supervision of an experienced foreman or experienced equipment or machine operator while production is in progress. An equipment or machine operator shall not operate equipment or a machine without direction and immediate supervision until such operator has demonstrated [knowledge of the safe operating procedures for the equipment or machine] to the satisfaction of the operator of the mine or to the mine foreman that the trainee possesses knowledge of the safe operating procedures for such equipment or machine.

(d) Any person who controls or directs rail haulage operations at a mine shall, before assignment to such duties, receive and complete training in safe haulage procedures related to the haulage system, ventilation system, firefighting procedures, and the emergency evacuation procedures in effect at the mine. This training may be received as part of the training program provided for in paragraphs (a), (b), and (c) of this subsection.

[Section 2. A miner shall not be required to undergo training for a new work assignment for the job to which he is regularly assigned on the effective date of the miner training program as determined by the board pursuant to KRS 351.104(1).]

Section 2. [3.] At such time as a [A] miner becomes qualified under the provisions of this regulation to perform any work assignment, he/she [shall] remain so qualified for the duration of the calendar year wherein the miner became so qualified, and] shall continue to be so qualified during any calendar year thereafter wherein the miner demonstrated safe operating procedures in performance of the work assignment during the preceding calendar year.

[Section 4. Any miner who has acquired a total of six (6) months' experience in performance of particular work duties shall not be required to undergo training for a new assignment to perform those duties; provided, however, that this exemption from training shall not apply to work experience acquired on or before June 1, 1975.]

[Section 5. Each operator shall annually submit to the department, in the form prescribed by the commissioner, a current list of the miners in his employ, the job assignments for which each miner is qualified and the basis for such qualification. This list shall be submitted to the department within thirty (30) days of the effective date of the miner training program as established by the board pursuant to KRS 351.104(1) and shall thereafter be submitted to the department during the month of January in each succeeding calendar year. A copy of said list shall be posted in a conspicuous place upon the premises of the mine and shall be updated to reflect changes as they occur.]

Section 3. [6.] The provisions of this regulation shall not be construed to alter or deprive any person of any right or duty accruing to that person by virtue of any labor-management contract.



WILLARD STANLEY, Commissioner  
MELVIN H. WILSON, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing regarding the proposed amendment of this regulation will be held in Room 103 of the Capitol Annex, Frankfort, Kentucky on Thursday, June 27, 1985, at 10 a.m., prevailing local time. Any person interested in attending such hearing shall notify in writing at least five (5) days before the hearing: Eugene D. Attkisson, General Counsel, Department of Mines and Minerals, P. O. Box 680, Lexington, Kentucky 40586. Absent such notification, the hearing may be cancelled.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugene D. Attkisson, General Counsel

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No change.

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: No change.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals (Proposed Amendment)

##### 805 KAR 7:060. Program approval.

RELATES TO: KRS 351.101, 351.102, 351.105

PURSUANT TO: KRS 13A.100, 351.020, 351.106

NECESSITY AND FUNCTION: KRS 351.102 and 351.105 provide for the establishment of a program of training and education of inexperienced underground coal miners. This regulation sets forth the manner in which private and public concerns desiring to train inexperienced miners in accordance with the above-cited statutes may submit such programs

for approval by the Board of Miner Training, Education and Certification.

Section 1. No person shall be issued a permit as a trainee miner unless that person has completed a program of training approved by the board, or that person has received a degree in mining engineering from an accredited institution of higher education or is enrolled in a course of mining technology approved by the board.

Section 2. A program of training for inexperienced miners shall be approved by the board if such program, at [as] a minimum, meets the criteria and objectives of 805 KAR 7:020, and the instructors teaching the program have been duly certified by the U.S. Department of Labor, Mine Safety and Health Administration [or by the U.S. Department of the Interior, Mining Enforcement and Safety Administration].

Section 3. Approval of training programs for inexperienced miners may be obtained by submitting for review such proposed training programs [sending] to the Department of Mines and Minerals, Board of Miner Training, Education [,] and Certification, P.O. Box 680, Lexington, Kentucky 40586, which proposed training programs shall contain, at a minimum, the following information:

(1) The address and location of the training facility to be utilized;

(2) A description of the equipment and facilities to be utilized;

(3) A list of the participating instructors;

(4) The content areas in the training program for which each instructor shall be responsible;

(5) The approximate number of students per class;

(6) The dates on which the training program will be conducted;

(7) The name and address of the person responsible for the formulation and implementation of the training program;

(8) An outline of the proposed program showing how it meets the criteria and objectives of 805 KAR 7:020;

(9) A list of instructional material to be utilized (e.g. films, programmed material, etc.), noting where such material will be used within the instructional sequence; and

(10) A description of the instructional methods to be utilized throughout the program (e.g. lecture-demonstration, personalized instruction, team-teaching, etc.).

Section 4. (1) Any approval granted by the board in accordance with the provisions of this regulation shall be conditional upon the practical implementation of the training program in a manner consistent with the criteria and objectives of 805 KAR 7:020.

(2) The department shall have the authority to monitor any approved program without prior notice.

(3) The board shall revoke its approval of any program that does not meet the criteria and objectives of 805 KAR 7:020 as ascertained by a monitoring of that program by the department.

(4) The board may revoke its approval of any program or part thereof when a monitoring of that program reveals that the instructor has not conducted the program or part thereof in a

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manner consistent with the criteria and objectives of 805 KAR 7:020.

WILLARD STANLEY, Commissioner  
MELVIN H. WILSON, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing regarding the proposed amendment of this regulation will be held in Room 103 of the Capitol Annex, Frankfort, Kentucky on Thursday, June 27, 1985, at 10 a.m., prevailing local time. Any person interested in attending such hearing shall notify in writing at least five (5) days before the hearing: Eugene D. Attkisson, General Counsel, Department of Mines and Minerals, P. O. Box 680, Lexington, Kentucky 40586. Absent such notification, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugene D. Attkisson, General Counsel

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No change.

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: No change.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes.

PUBLIC PROTECTION AND REGULATION CABINET  
Department of Mines and Minerals  
(Proposed Amendment)

805 KAR 7:070. Monthly reporting procedures and record maintenance.

RELATES TO: KRS 351.102, 351.105

PURSUANT TO: KRS 13A.100, 351.105, 351.106

NECESSITY AND FUNCTION: KRS 351.102 requires the Board of Miner Training, Education and Certification to establish criteria and standards for a program of training and

education for underground coal miners. [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate regulations, necessary to implement the program of education and training.] This regulation sets forth the reporting procedures and record maintenance necessary to implement and administer such program.

Section 1. Reporting Requirements. (1) The operator of each underground coal mine shall [may, at his option,] make [,] a monthly report to the department on forms prescribed by the commissioner.

[(2) In the event that an operator makes monthly reports to the department in accordance with the provisions of this regulation, then that operator need not make the reports required by 805 KAR 7:030(3), 805 KAR 7:040(3), and 805 KAR 7:050(5).]

(2) [(3)] Each such monthly report shall be mailed to the department no later than fifteen (15) days subsequent to the last day of each month.

(3) [(4)] A copy of the last monthly report submitted to the department shall be posted in a conspicuous place on the mine premises.

[(5) Any operator wishing to make monthly reports to the department in lieu of the reports required by 805 KAR 7:030(3), 805 KAR 7:040(3), and 805 KAR 7:050(5) may do so by giving written notification to the department of his intent to submit monthly reports.]

Section 2. Information to be Reported Monthly.

(1) Each monthly report shall contain the following information:

(a) Identification of each person who [that] accumulated a total of sixteen (16) hours of annual retraining [since the first day of the prevailing calendar year,] during that month;

(b) Identification of each newly-hired miner who received eight (8) hours of mine specific training in accordance with 805 KAR 7:040[,], during that month;

(c) Identification of each experienced miner re-hired by the operator during that month who had received the mine specific training set forth in 805 KAR 7:040 within the twelve (12) preceding months;

(d) Identification of each miner who has completed twenty (20) hours of training for a new work assignment during that month as set forth in 805 KAR 7:050, and the particular work assignment for which the training was received; and

(e) Identification of each miner qualified in the preceding calendar year who [has] demonstrated safe operating procedures in the performance of a particular work assignment during that month.

(2) The operator shall report the information required by this regulation as it pertains to each person employed by the operator during the reported month regardless of whether that person is so employed at the time of submission of the monthly report.

(3) If, during any month, none of the events required to be reported occur, [then] the operator need not submit any report for that month.

Section 3. Record Maintenance. (1) The operator shall maintain upon the mine premises

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current and accurate records of the following:

(a) The dates on which annual retraining sessions were conducted by the operator, the persons receiving the annual retraining on those dates, and the subjects covered by each annual retraining session;

(b) The name of each miner newly-hired during the prevailing calendar year, the date on which he/she was hired, and the date on which he/she received eight (8) hours of mine specific training; and

(c) The particular work assignments [for] which each miner is qualified to perform pursuant to 805 KAR 7:050, and the basis for such qualification[s].

(2) The operator shall maintain upon the mine premises a copy of all monthly reports submitted to the department during the preceding twelve (12) months.

WILLARD STANLEY, Commissioner

MELVIN H. WILSON, Secretary

APPROVED BY AGENCY: May 1, 1985

FILED WITH LRC: May 1, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing regarding the proposed amendment of this regulation will be held in Room 103 of the Capitol Annex, Frankfort, Kentucky, on Thursday, June 27, 1985 at 10 a.m., prevailing local time. Any person interested in attending such hearing shall notify in writing at least five (5) days before the hearing: Eugene D. Attkisson, General Counsel, Department of Mines and Minerals, P.O. Box 680, Lexington, Kentucky 40586. Absent such notification, the hearing may be cancelled.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugene D. Attkisson

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: See statement below for 1, 2, and 3.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No adverse change is anticipated as to the miner-operator, since the cumulative, annual reporting of information will be required to be spread over a 12-month reporting period; the frequency of such reports, though possibly increased as to some miner-operators, will allow the information presently contained in the annual report to be more readily gathered and reported, thereby resulting in a savings of time and money, to the benefit of the reporting miner-operator.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: See statement below for 1, 2, and 3.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The agency will benefit from a requirement for monthly reports, in that such reports will more evenly distribute the task of reviewing and recording the information presently contained in the annual report over a 12-month period, rather than concentrating such reviewing and recording

of information over an approximately 4-month period encompassing the months of November-February.

(3) Assessment of anticipated effect on state and local revenues: No change

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? Yes

## PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions Division of Securities (Proposed Amendment)

808 KAR 10:010. Forms for application, registration; reporting and compliance.

RELATES TO: KRS Chapter 292

PURSUANT TO: KRS [13.082,] 292.500(3)

NECESSITY AND FUNCTION: To promulgate and make available to persons affected by the Kentucky Securities Act the forms necessary for registration, reporting and general compliance.

Section 1. The following forms are incorporated herein by reference, for use by those persons affected by the Act. The requirements and instructions contained in the forms shall have the same force and effect as rules and regulations duly promulgated. Information on obtaining the forms is available through the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C. 20006 (or any regional NASD office) or from the Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

(1) Form BD; Application for Registration as Broker-Dealer.

(2) Form U-4 [(1981 Rev.);] Application for Registration as Agent or Transfer of an Agent.

(3) Form 33-e (Rev. 10/1/82); Application for Renewal of Broker-Dealer and Agent Licenses.

(4) Form 33-e-1; Application for Renewal of Issuer Agents.

(5) Form ADV; Application for Registration of an Investment Adviser (may be obtained from Securities and Exchange Commission, Branch of BD and IA Registration, Washington, D.C. 20549).

(6) Form 33-h-1 (Rev. 10/1/82); Application for Renewal of Investment Adviser's License.

[(7) Form 33-e-1; Application for Renewal of Issuer Agents.]

[(7) [(8)] Form 34; Report to be Filed by an Issuing Company Registered for the Purpose of Selling Its Own Securities.]

[(8) [(9)] Form 35-a; Application for Registration by Notification (Non-Issuer Distribution).]

[(9) [(10)] Form U-1; Application for Registration of Securities by Notification or Coordination.]

(10) [(11)] Form ICURA (Investment Company Uniform Report and/or Application); Application for Annual Renewals of Investment Company Registrations.

(11) [(12)] Form 37 (amended); Application for Registration of Securities of Qualification.

(12) [(13)] Form 38-a; Impounding Agreement.

(13) [(14)] Form U-2; Consent to Service of Process and Jurisdiction (Investment Adviser, Broker-Dealer or Issuer).

(14) [(15)] Form U-2A; Resolution (Investment Adviser, Broker-Dealer or Issuer).

(15) Form BDW; Notice of Broker-Dealer withdrawal.

BALLARD W. CASSADY, JR., Commissioner  
RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: Affects Broker-Dealers. There are about 600 in Kentucky. Virtually none will be affected by this change.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: One extra form for Broker-Dealers withdrawing from doing business in this state.

(2) Effects on the promulgating administrative body: Will facilitate our ability to administer applicable laws.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: One extra form which will benefit more than it will burden the department.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The net effect of this regulation is to add one

form to the list already required.

Tiering:

Was tiering applied? Yes.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions Division of Securities (Proposed Amendment)

808 KAR 10:020. Net capital of broker-dealers.

RELATES TO: KRS Chapter 292

PURSUANT TO: KRS [13.082,] 292.500(3)

NECESSITY AND FUNCTION: To insure that broker-dealers entrusted with the custody of their customers' money and securities are sufficiently capitalized and sufficiently liquid so as to reduce the risk of customer loss in the event the broker-dealer encounters financial misfortune.

Section 1. All broker-dealers shall meet the net capital requirements of Rule 15c3-1, 15c3-1a, 15c3-1b, 15c3-1c and 15c3-1d (17 CFR Sec. 240.15c3-1, Sec. 240.15c3-1a, Sec. 240.15c3-1b, Sec. 240.15c3-1c, and Sec. 240.15c3-1d) Securities and Exchange Commission of the United States Government as it exists on April 1, 1984. [No broker-dealer shall permit his aggregate indebtedness to all other persons to exceed 2,000 per centum of his net capital, and every broker-dealer shall have the net capital necessary to comply with the following conditions:]

[(1) If he became registered as broker-dealer on and after August 13, 1971, his aggregate indebtedness to all other persons on and after August 30, 1972, and for twelve (12) months after becoming registered shall not exceed 800 per centum of his net capital, and except as provided for in subsections (3) and (4) hereof, he shall have and maintain net capital of not less than \$25,000; and]

[(2) If he became registered as a broker-dealer before August 13, 1971, and he does not come within the provisions of subsections (3) or (4) hereof, he shall have and maintain net capital of not less than \$15,000 commencing July 31, 1973, and \$25,000 commencing July 31, 1974;]

[(3) Notwithstanding the provisions of subsections (1) and (2) hereof, if he promptly transmits all funds and delivers all securities received in connection with his activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers he shall have and maintain net capital of not less than \$5,000 if he does not otherwise carry accounts of or for customers; and]

[(4) The minimum net capital to be maintained by a broker-dealer meeting all the following conditions shall be \$2,500:]

[(a) His dealer transactions (as principal for his own account) are limited to the purchase, sale and redemption of redeemable shares of registered investment companies, except that a broker-dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account and with or through another registered broker-dealer.]

[(b) His transactions as broker-dealer are limited to:]

[1. The sale and redemption of redeemable securities of registered investment companies;]

[2. The sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and]

[(c) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.]

Section 2. Regardless of any contrary provision in rule 15c3-1, 15c3-1a, 15c3-1b, 15c3-1c and 15c3-1d (17 CFR Sec. 240.15c3-1, Sec. 240.15c3-1a, Sec. 240.15c3-1b, Sec. 240.15c3-1c, and Sec. 240.15c3-1d) no broker-dealer shall have and maintain liquid net capital of less than \$5000 and if said broker-dealer has custody of client funds he shall have and maintain liquid net capital of \$25,000. [The following exemption to this rule shall apply:]

[(1) The provisions of this rule shall not apply to any broker who is also a licensed insurance agent under the laws of any state of the District of Columbia, whose securities business is limited to effecting transactions in variable annuity contracts as general agent for the issuer, who promptly transmits all funds and delivers all variable annuity contracts received in connection therewith, and who does not otherwise hold funds or securities for or owe money or securities to customers, if the issuer files with the director an undertaking satisfactory to it that the issuer will assume responsibility for all valid claims arising out of all activities of such agent in effecting transactions in such variable annuity contracts; provided, however, that a broker transacting business as a sole proprietor who meets all other conditions of this subsection may also effect occasional transactions in other securities for his own account with or through another registered broker-dealer.]

[(2) The provisions of this rule shall not apply to any member in good standing and subject to the capital rules of the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Coast Stock Exchange, PBW Stock Exchange, or the Chicago Board Options Exchange, Inc., whose rules, settled practices and applicable regulatory procedures are deemed by the director to impose requirements more comprehensive than the requirements of this rule; provided, however, that the exemption as to the members of any exchange may be suspended or withdrawn by the director at any time by sending ten (10) days written notice to such exchange, if it appears to the director to be necessary or appropriate in the public interest or for the protection of investors so to do. This exemption shall not be available to the members of any exchange whose capital rules do not provide that in the computation of net capital there shall be a deduction of not less than ten (10) percent of the contract price of each item in the securities failed to deliver account which is outstanding forty (40) to forty-nine (49) calendar days; twenty (20) percent of the contract price of each item in

the securities failed to deliver account which is outstanding fifty (50) to fifty-nine (59) calendar days; and thirty (30) percent of the contract price of each item in the securities failed to deliver account is outstanding sixty (60) or more calendar days.]

[(3) The director may, upon written application, exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any broker-dealer who satisfies the director that, because of the special nature of his business, his financial position, and the safeguards he has established for the protection of customers' funds and securities, it is not necessary in the public interest or for the protection of investors to subject to particular broker-dealer to the provisions of this rule.]

Section 3. The minimum capitalization established in Sections 1 and 2 of this regulation may be reduced or waived by the director upon a showing that such minimum capitalization is not necessary in the public interest given the limited nature of the broker-dealer's activities. [For purposes of this rule the following definitions shall apply:]

[(1) The term "aggregate indebtedness" shall be deemed to mean the total money liabilities of a broker-dealer arising in connection with any transaction whatsoever, including, among other things: money borrowed; money payable against securities loaned and securities "failed to receive," the market value of securities borrowed (except for delivery against customers' sales) to the extent to which no equivalent value is paid or credited; customers' free credit balances; credit balances in customers' accounts having short positions in securities; and equities in customers' accounts having short positions in securities; and equities in customers' commodities future accounts; but excluding:]

[(a) Indebtedness adequately collateralized, as hereinafter defined, by securities or spot commodities owned by the broker-dealer;]

[(b) Indebtedness to other broker-dealers adequately collateralized, as hereinafter defined, by securities or spot commodities owned by the broker-dealer;]

[(c) Amount payable against securities loaned which securities are owned by the broker-dealer;]

[(d) Amounts payable against securities failed to receive which securities were purchased for the account of, and have not been sold by, the broker-dealer;]

[(e) Indebtedness adequately collateralized, as hereinafter defined, by exempted securities;]

[(f) Amounts segregated in accordance with the Commodity Exchange Act and the rules and regulations thereunder;]

[(g) Fixed liabilities adequately secured by real estate or any other asset which is not included in the computation of "net capital" under this rule;]

[(h) Liabilities on open contractual commitments;]

[(i) Indebtedness subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement, as hereinafter defined;]

[(j) Liability reserves established and maintained for refunds of charges required by Section 27(d) and 27(f) of the Investment Company Act of 1940, but only to the extent of

the amounts on deposit in a segregated trust account in accordance with Rule 27d-1 under the Investment Company Act of 1940.]

[(2) The term "net capital" shall be deemed to mean the net worth of a broker-dealer (that is, the excess of total assets over total liabilities), adjusted by:]

[(a) Adding unrealized profits (or deducting unrealized losses) in the accounts of the broker-dealer and, if such broker-dealer is a partnership, adding equities (or deducting deficits) in accounts of partners, as hereinafter defined;]

[(b) Deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness secured thereby) including, among other things, real estate; furniture and fixtures; exchange memberships; prepaid rent, insurance and expenses; good will; organization expenses; all unsecured advances and loans; customers' unsecured notes and accounts; deficits in customers' accounts, except in bona fide cash accounts within the meaning of Section 4(c) of Regulation T of the Board of Governors of the Federal Reserve System; and the funds on deposit in a "segregated trust account" in accordance with Rule 27d-1 under the Investment Company Act of 1940, but only to the extent that the amounts on deposit in such segregated trust account exceed the amount of liability reserves established and maintained for refunds of charges required by Section 27(d) and 27(f) of the Investment Company Act of 1940. Provided, however, that the cash and market value of securities, as reduced by the appropriate percentages provided in paragraph (c) below, which are deposited with a clearing fund maintained by a clearing corporation or similar department of association of a national securities exchange or registered national securities association using a continuous net settlement system for the clearance and settlement of securities transaction (hereinafter called "clearing agency") need not be deducted under the provisions of this subsection.]

[(c) Deducting the percentages specified below of the market value of all securities, long and short (except exempted securities) in the capital, proprietary and other accounts of the broker-dealer, including securities loaned to the broker-dealer, pursuant to a satisfactory subordination agreement as hereinafter defined, and if such broker-dealer is a partnership, in the accounts of partners, as hereinafter defined: 1. In the case of nonconvertible debt securities have a fixed interest rate and a fixed maturity date which are not in default, if the market value is not more than five (5) percent below the face value, the deduction shall be five (5) percent of such market value; if the market value is more than five (5) percent but not more than thirty (30) percent below the face value, the deduction shall be a percentage of market value, equal to the percentage by which the market value is below the face value, and if the market value is thirty (30) percent or more below the face value, such deduction shall be thirty (30) percent. 2. In case of cumulative, nonconvertible preferred stock ranking prior to all other classes of stock of the same issuer, which is not in arrears as to dividends, the deduction shall be twenty (20) percent; 3. In

the case of a debt security not in default which has a fixed rate of interest and a fixed maturity date and which is convertible into an equity security, the deduction shall be as follows: If the market value is ninety (90) percent or more of the face value, the deduction shall be thirty (30) percent of the market value, but in no event shall such deduction reduce the value of such security below eighty (80) percent of face value for the purposes of this section; if the market value is below the face value by more than ten (10) percent but not more than thirty (30) percent the deduction shall be a percentage of market value equal to the percentage by which the market value is below the face value; if the market value is thirty (30) percent or more below the face value, the deduction shall be thirty (30) percent. 4. On all other securities, the deduction shall be thirty (30) percent; provided, however, that such deduction need not be made in the case of (i) a security which is convertible into or exchangeable for other securities within a period of thirty (30) days, subject to no conditions other than the payment of money, and the other securities into which such security is convertible, or for which it is exchangeable, are short in the accounts of such broker-dealer or partner, or (ii) a security which has been called for redemption and which is redeemable within ninety (90) days.]

[(d) Deducting thirty (30) percent of the market value of all "long" and all "short" future commodity contracts (other than those contracts representing spreads or straddles in the same commodity and those contracts offsetting or hedging any "spot" commodity positions) carried in the capital, proprietary or other accounts of the broker-dealer and, if such broker-dealer is a partnership, in the accounts of partners as hereinafter defined;]

[(3) Deducting, in the case of a broker-dealer who has open contractual commitments, the respective deductions as specified in paragraph (c) of this subsection, form the value (which shall be the market value whenever there is a market) of each net long and each net short position contemplated by any existing contractual commitment in the capital, proprietary and other accounts of a broker-dealer and, if such broker-dealer is a partnership, in accounts of partners, as hereinafter defined; provided, however, that this deduction shall not apply to exempted securities, and that the deduction with respect to any individual commitment shall be reduced by the unrealized profit, in any amount not greater than the deduction provided for in paragraph (c) of this subsection (or increased by the unrealized loss), in such commitment; and that in no event shall an unrealized profit on any closed transactions operate to increase net capital.]

[(f) Deducting an amount equal to one and one-half (1 1/2) percent of the market values of the total long or total short futures contracts in each commodity, whichever is greater, carried for all customers.]

[(g) Excluding liabilities of the broker-dealer which are subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement as herein defined.]

[(h) Deducting, in the case of broker-dealer

who is a sole proprietor, the excess of (i) liabilities which have not been incurred in the course of business as a broker-dealer over (ii) assets not used in the business.]

[(i) Deducting ten (10) percent of the contract price of each item in the securities failed to deliver account which is outstanding forty (40) to forty-nine (49) calendar days; deducting twenty (20) percent of the contract price of each item in the securities failed to deliver account which is outstanding fifty (50) to fifty-nine (59) calendar days; and deducting thirty (30) percent of the contract price of each item in the securities failed to deliver account which is outstanding sixty (60) or more calendar days.]

[(3) The term "exempted securities" shall mean those securities specifically defined as exempted securities in Section 3(a) of the Securities Exchange Act of 1934;]

[(4) The term "accounts of partners," where the broker-dealer is a partnership, shall mean accounts of partners who have agreed in writing that the equity in such accounts maintained with such partnership shall be included as partnership property;]

[(5) The term "contractual commitments" shall include underwriting, when-issued, when-distributed and delayed delivery contracts, endorsements of puts and calls, commitments in foreign currencies, and spot (cash) commodities contracts, but shall not include uncleared regular way purchases and sales of securities and contracts in commodities futures; a series of contracts of purchase or sale of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment;]

[(6) Indebtedness shall be deemed to be "adequately collateralized" within the meaning of this rule, when the difference between the amount of the indebtedness and the market value of the collateral is sufficient to make the loan acceptable as a fully secured loan to banks regularly making comparable loans to broker-dealers in the community."]

[(7) The term "satisfactory subordination agreement" shall mean a written agreement duly executed by the broker-dealer and the lender, which agreement is binding and enforceable in accordance with its terms upon the lender, his creditors, heirs, executors, administrators, and assigns, and which agreement satisfies all of the following conditions:]

[(a) It effectively subordinates any right of the lender to demand or receive payment or return of the cash or securities loaned to the claims of all present and future creditors of the broker-dealer;]

[(b) The cash or securities are loaned for a term of not less than one (1) year;]

[(c) It provides that the agreement shall not be subject to cancellation by either party, and that the loan shall not be repaid and the agreement shall not be terminated, rescinded or modified by mutual consent or otherwise if the effect thereof would be to make the agreement inconsistent with the conditions of this rule or to reduce the net capital of the broker-dealer below the amount required by this rule;]

[(d) It provides that no default if the payment of interest or in the performance of any covenant or condition by the broker-dealer shall have the effect of accelerating the maturity of

the indebtedness;]

[(e) It provides that any notes or other written instruments evidencing the indebtedness shall bear on their face an appropriate legend stating that such notes or instruments are issued subject to the provisions of subordination agreement which shall be adequately referred to and incorporated by reference;]

[(f) It provides that any securities or other property loaned to the broker-dealer pursuant to its provisions may be used and dealt with by the broker-dealer as part of his capital and shall be subject to the risks of the business;]

[(8) The term "customer" shall mean any person except the broker-dealer; provided, however, that partners who maintain "accounts of partners" as herein defined shall not be deemed to be customers insofar as such accounts are concerned;]

[(9) The term "clearing fund" shall mean a fund established by a clearing agency to receive and hold deposits of cash or securities or both cash and securities from members of such clearing agency for use in payment, and as security for payment, of the liabilities of such members to such clearing agency, or for use in payment by the clearing agency of liabilities it has incurred as a result of its clearing and settling of securities transactions;]

[(10) The term "continuous net settlement system" shall mean that system for the clearing and settlement of securities transactions whereby a clearing agency;]

[(a) Compares trade execution data submitted by members to arrive at agreed upon contract terms;]

[(b) On a given date nets purchases and sales of securities by a member with such member's previously unfulfilled purchase or sale obligations with respect to such securities;]

[(c) Allocates delivery obligations as to money and securities between members and the clearing agency itself for unsettled transactions; and]

[(d) Acts as the other party in the settlement of cleared transactions between members with respect to both money and securities.]

Section 4. Generally accepted accounting principles shall apply in interpreting and administering the provisions of this rule if federal and Kentucky statutes, case law, and administrative regulations and interpretations leave an issue under this regulation unresolved, but only until the issue is resolved by federal or Kentucky statutes, case law, administrative regulations, or interpretations.

BALLARD W. CASSADY, JR., Commissioner  
RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing:



William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: About 600 registered broker-dealers.

(a) Direct and indirect costs or savings to those affected: Indeterminable

1. First year: Indeterminable

2. Continuing costs or savings: Indeterminable

3. Additional factors increasing or decreasing costs (note any effects upon competition): Ability of broker-dealer to conform to Federal requirements alone and satisfy two regulating entities should reduce labor or professional services costs.

(b) Reporting and paperwork requirements: Should be reduced. Virtually all or all broker-dealers can conform to Federal requirements and dispense with state.

(2) Effects on the promulgating administrative body: Indeterminable

(a) Direct and indirect costs or savings: Indeterminable

1. First year: Indeterminable

2. Continuing costs or savings: Indeterminable

3. Additional factors increasing or decreasing costs: One set of standards will govern and reduce administrative costs.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None in Ky. Securities and Exchange Commission Rules - 17 CFR 240.15c3-1, 240.15c3-1a, 240.15c3-1b, 240.15c3-1c and 240.15c3-1d.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: This regulation will greatly simplify the broker-dealer's compliance burden.

Tiering:

Was tiering applied? Yes

**PUBLIC PROTECTION AND REGULATION CABINET**  
Department of Financial Institutions  
Division of Securities  
(Proposed Amendment)

808 KAR 10:060. Abandoned applications.

RELATES TO: KRS Chapter 292

PURSUANT TO: KRS [13.082,] 292.500(3)

NECESSITY AND FUNCTION: To permit the division [department] to insure that all applications for registration are being actively pursued and to provide administrative due process of law when applicants encounter legitimate unavoidable delay.

Section 1. When a registration statement, or a pre [post]-effective amendment to such a

statement, has been on file with the director for a period of nine (9) months and has not become effective, the director may, in his discretion proceed in the following manner to determine whether such registration statement or amendment has been abandoned by the registrant:

(1) A notice will be sent to the registrant and to the agent for service named [s] in the registration statement by registered or certified mail, return receipt requested, addressed to the most recent address for the registrant and the agent for service reflected in the registration statement. Such notice will inform the registrant and the agent for service that the registration statement or amendment is out of date and must be either amended to comply with the applicable requirements of the Act and the rules and regulations thereto, or be withdrawn within thirty (30) days after the date of such notice.

(2) If the registrant or the agent for service fails to respond to such notice by filing a substantive amendment or withdrawing the registration statement or does not furnish a satisfactory explanation as to why he has not done so within such thirty (30) days, the director may, [where consistent with the public interest and the protection of investors, enter an order] declare [declaring] the registration statement or amendment abandoned. Fees will be deemed to be forfeited and will not be returned.

[(3) When such an order is entered by the director, the papers comprising the registration statement or amendment will be returned to the registrant, except that the registration fee and the examination fee will be deemed to be forfeited and will not be returned.]

Section 2. If the registration statement has been amended, otherwise than for the purpose of delaying the effective date thereof, or if the pre [post]-effective amendment has been amended, the nine (9) month period shall be computed from the date of the latest such amendment.

BALLARD W. CASSADY, JR., Commissioner  
RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: Issuers of securities registering pursuant to the securities laws of Kentucky and abandoning registration. Number affected is very slight.

(a) Direct and indirect costs or savings to those affected: Any fees paid for registration.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A  
 (b) Reporting and paperwork requirements: None  
 (2) Effects on the promulgating administrative body: Virtually none  
 (a) Direct and indirect costs or savings: Virtually none  
 1. First year: Virtually none  
 2. Continuing costs or savings: Virtually none  
 3. Additional factors increasing or decreasing costs: None  
 (b) Reporting and paperwork requirements: None  
 (3) Assessment of anticipated effect on state and local revenues: None  
 (4) Assessment of alternative methods; reasons why alternatives were rejected: N/A  
 (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None  
 (a) Necessity of proposed regulation if in conflict:  
 (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:  
 (6) Any additional information or comments: The only real change is the forfeiture of registration fee. No other substantive change.

Tiering:  
 Was tiering applied? Yes

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Financial Institutions**  
**Division of Securities**  
**(Proposed Amendment)**

**808 KAR 10:090. Issuers' reports.**

RELATES TO: KRS Chapter 292  
 PURSUANT TO: KRS [13.082,] 292.500(3)  
 NECESSITY AND FUNCTION: To provide a method by which issuers may keep a registration statement current beyond the initial one (1) year period of registration.

Section 1. The person who files a registration statement pursuant to KRS 292.360, except a registration statement which relates only to redeemable securities issued by an open-end management investment company as defined in the Investment Company Act of 1940, may keep the registration statement current by filing the following:

(1) A copy of the issuer's annual report on Form 10-K as filed with the Securities and Exchange Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, or a document containing equivalent information acceptable to the director.

(2) A statement of the aggregate amount of securities sold in the state of Kentucky during the preceding twelve (12) month period.

(3) Any [All] post-effective amendments to the issuer's federal registration statement not already on file with the division.

BALLARD W. CASSADY, JR., Commissioner  
 RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial

Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: William E. Doyle  
 (1) Type and number of entities affected: Persons filing a registration statement pursuant to KRS 292.360; very few entities affected.  
 (a) Direct and indirect costs or savings to those affected: Virtually none.  
 1. First year: Virtually none  
 2. Continuing costs or savings: Virtually none  
 3. Additional factors increasing or decreasing costs (note any effects upon competition): None  
 (b) Reporting and paperwork requirements: No additional.  
 (2) Effects on the promulgating administrative body: Reduced duplication of filings.  
 (a) Direct and indirect costs or savings: Virtually none  
 1. First year: Virtually none  
 2. Continuing costs or savings: Virtually none  
 3. Additional factors increasing or decreasing costs: None  
 (b) Reporting and paperwork requirements: None  
 (3) Assessment of anticipated effect on state and local revenues: None  
 (4) Assessment of alternative methods; reasons why alternatives were rejected: N/A  
 (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None  
 (a) Necessity of proposed regulation if in conflict:  
 (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:  
 (6) Any additional information or comments: This regulation will slightly reduce the number of items which must be filed in a small portion of offerors of securities.

Tiering:  
 Was tiering applied? Yes.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Financial Institutions**  
**Division of Securities**  
**(Proposed Amendment)**

**808 KAR 10:120. Registration files.**

RELATES TO: KRS Chapter 292  
 PURSUANT TO: KRS [13.082,] 292.500(3)  
 NECESSITY AND FUNCTION: To require that broker-dealer registration files are kept current.

Section 1. Every registered broker-dealer and investment adviser shall promptly amend its registration file upon the happenings of any of the following events:

(1) Any change in the registrant's certifying accountant and a detailed statement of the

reasons therefor.

(2) Any change in the registrant's net capital position which would result in a violation of the minimum net capital requirements [or the surety bond requirements].

(3) Any change in the control of the registrant.

(4) The institution of any material legal proceeding to which the registrant is a party.

(5) Any change in the address of the registrant or of any branch offices to the registrant.

(6) Any material change on the operations of the registrant.

BALLARD W. CASSADY, JR., Commissioner

RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: About 600 registered broker-dealers.

(a) Direct and indirect costs or savings to those affected:

1. First year: Indeterminable

2. Continuing costs or savings: Indeterminable

3. Additional factors increasing or decreasing costs (note any effects upon competition): Indeterminable

(b) Reporting and paperwork requirements: Should be reduced.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indeterminable

2. Continuing costs or savings: Indeterminable

3. Additional factors increasing or decreasing costs: Kentucky does not have a surety bond requirement.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? Yes

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions Division of Securities (Proposed Amendment)

808 KAR 10:130. Amendments to registration statement.

RELATES TO: KRS Chapter 292

PURSUANT TO: KRS [13.082,] 292.500(3)

NECESSITY AND FUNCTION: To require that any and all changes in registration statements and amendments are clearly brought to the attention of division [department] personnel.

Section 1. All amendments to [the federal registration] statements filed pursuant to KRS 292.360 or 292.370 [(2)(g)] shall be underlined and otherwise marked where there are changes from the last amendment filed.

BALLARD W. CASSADY, JR., Commissioner

RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: Issuers making amendments to registration statements. Very few persons or entities affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Minimal; underline changes (amendments) in registration statements.

(2) Effects on the promulgating administrative body: Changes or amendments will be more apparent.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:  
None

Tiering:

Was tiering applied? Yes

**PUBLIC PROTECTION AND REGULATION CABINET**  
Department of Financial Institutions  
Division of Securities  
(Proposed Amendment)

**808 KAR 10:140. Registration statements to be current.**

RELATES TO: KRS Chapter 292

PURSUANT TO: KRS [13.082,] 292.500(3)

NECESSITY AND FUNCTION: To insure that registration statements are kept current and that all material events subsequent to the date of registration are reported.

Section 1. An issuer who files a registration statement pursuant to KRS 292.370 shall keep the registration statement current by filing the following:

(1) A balance sheet and an income statement of the issuer quarterly, except that no such statement need be filed for the quarter which ends the issuer's fiscal year. Such information shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis, but may be unaudited.

(2) Certified financial statements of the issuer for each fiscal year subsequent to registration. Such statements shall be prepared in the same manner and shall contain the same information as would be required for initial registration.

(3) A verified statement setting forth any material change in the operation of the issuer.

Section 2. Material changes in the operation of the issuer reportable pursuant to Section 1(3) of this regulation shall include but not be limited to:

(1) Changes in control of the issuer;

(2) Changes in officers and directors;

(3) [(2)] Acquisition or disposition of a significant amount of the issuer's assets otherwise than in the ordinary course of business;

(4) [(3)] Institution of] Legal; proceedings other than routine litigation incidental to the ordinary conduct of the issuer's business;

(5) [(4)] Modification of the relative rights of the holders of different classes of securities;

(6) [(5)] Changes in assets maintained as security for outstanding securities;

(7) [(6)] Any default in the payment of interest, principal, or sinking fund installments relative to any [senior] security;

[(7)] Any increase or decrease in the amount of outstanding securities on any class if such increase or decrease is not otherwise reported to the division;]

(8) Any increase in amount of options or warrants;

(9) Any revaluation of assets or restatement of capital share account;

(10) Any matter submitted to a vote of security holders;

(11) Any change in the issuer's certifying accountant and a statement of the reasons therefor;

(12) Openings or closings of offices or plants.

Section 3. Information under Section 1(1) of this regulation shall be filed with the director no later than thirty (30) days following the end of the quarter. Information required under Section 1(2) of this regulation shall be filed with the director no later than 120 days following the end of the fiscal year, and information required under Section 1(3) of this regulation shall be filed not later than ten (10) days following the end of the month in which the material change occurred.

Section 4. Any prospectus or offering circular used or proposed to be used in connection with the sale of any security registered pursuant to KRS 292.370 shall be promptly amended to reflect the most recent annual financial statements of the issuer and any material changes reported under Section 1(3) of this regulation.

Section 5. Quarterly reports forwarded to the division [department] pursuant to Section 1(1) of this regulation shall not be deemed to be "filed" for purposes of KRS 292.440.

BALLARD W. CASSADY, JR., Commissioner

RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: Issuers of securities registering under Kentucky Securities law. Very few entities affected.

(a) Direct and indirect costs or savings to those affected: Virtually none

1. First year: Virtually none

2. Continuing costs or savings: Virtually none

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Minimal; must report changes in officers, or directors and openings and closings of plants.

(2) Effects on the promulgating administrative body: More disclosure is available.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state

and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This regulation only adds two more items of disclosure to the existing list of disclosure items. There are existing disclosure requirements and so the changes pose no problem.

Tiering:

Was tiering applied? Yes

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Financial Institutions**  
**Division of Securities**  
**(Proposed Amendment)**

**808 KAR 10:150. Registration exemptions.**

RELATES TO: KRS 292.410(1)

PURSUANT TO: KRS [13.082,] 292.500(3)

NECESSITY AND FUNCTION: To declare that registration is not necessary in the public interest for certain [types of] business transactions [with limited securities implications] pursuant to KRS 292.410(1)(q).

Section 1. Pursuant to KRS 292.410(1)(q), the director having found that registration under [the enforcement of] the Kentucky Securities Act is not necessary or appropriate in the public interest or for the protection of investors, [and] securities issued under the following classes of transactions shall be exempt from KRS 292.340 to 292.390 and no claims of exemption need be filed with the division [need not file to claim the exemption]. However, any persons receiving commissions or other remuneration in connection with sales made pursuant to these exemptions are not relieved of compliance with the registration requirements of KRS 292.330.

(1) Small business organization. Where ten (10) or fewer persons organize a corporation, joint venture, or similar business organization other than a limited partnership, provided that:

(a) There are no more than twenty-five (25) offerees;

(b) The security acquired does not evidence an oil, gas or mineral interest;

(c) Each person purchases with investment intent;

(d) Each purchaser is an organizer on the date the issuer is formed;

(e) Each purchaser has access to information concerning the issuer;

(f) In connection with the organization, no commission or other remuneration is paid or given directly or indirectly to any person for soliciting any prospective buyer in this state;

(g) No public advertising through newspapers, television, radio, handbills, or other such solicitation will be employed in effectuating the proposed transaction.

(2) Professional service corporation. Any security issued by a professional service

corporation organized under KRS Chapter 274 or substantially similar legislation of another state, provided:

(a) The professional service corporation complies with the ownership and retransfer restrictions set forth in KRS Chapter 274;

(b) The securities are sold to a professional person;

(c) The seller must reasonably believe that each buyer is purchasing for investment; and

(d) Each professional is provided access to information concerning the professional service corporation.

[(3) Limited offering of securities related to oil, gas and mineral interests to select persons under select conditions. Any offer or sale of a certificate of interest or participation in an oil, gas or mineral title, lease or assignment, or in payments out of production under such title, lease or assignment, provided each such sale complies with each of the following:]

[(a) The number of investors cannot exceed thirty-five (35);]

[(b) Offers and sales can only be made to the following types of investors:]

[1. A professional geologist, professional oil, gas or mineral landman, geophysicist, petroleum engineer or mining engineer;]

[2. A person who is regularly engaged in the business of production of or exploration for oil, gas or minerals as a full-time vocation or for his primary source of income;]

[3. A sophisticated investor who the issuer and any person acting on its behalf in the offer, offer to sell, offer for sale or sale of the securities shall have reasonable grounds to believe and shall believe:]

[a. Immediately prior to making any offer, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil, gas or mineral investment;]

[b. Immediately prior to making any sale, after reasonable inquiry, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil, gas or mineral investment;]

[c. That each investor has a minimum net worth of \$100,000 exclusive of home, home furnishings and automobiles, and in addition, is able to bear the economic risk of the investment (for purposes of determining the ability to bear the economic risk, the relationship between the investor's net worth and the amount of the investment shall be a substantial factor); and]

[d. That each purchaser has access to information concerning the issuer.]

[(c) The offeror must reasonably believe that each purchaser is purchasing for investment and not with a view for resale and each investor must represent in writing that he understands he cannot resell his security without registration or other compliance with the state and federal securities laws; provided, however, solely for purposes of those investors described in paragraphs (b)1 and (b)2 of this subsection, sales may be made exclusively among those persons described in paragraphs (b)1 and (b)2 of this subsection for purposes of assembling lease or other rights for oil, gas or mineral production or exploration, and resales of their whole interests may be made exclusively among

those persons described in paragraphs (b)1 and (b)2 of this subsection without regard to a holding period requirement.]

[(d) Resales by persons described in paragraph (b)3 of this subsection within two (2) years of their purchase of any such security can only be made to persons described in paragraphs (b)1 and (b)2 of this subsection; such resales must be of their whole interests and not fractional interests in the securities.]

[(e) Sales by persons described in paragraph (b)3 of this subsection of their whole interests back to the issuer shall not be considered to be "resales" for purposes of this regulation.]

[(f) This exemption shall not be available to any issuer, if it, any officer, director, promoter, sponsor, operator, organizer or agent of such issuer or other authorized person participating in the process of offering or selling such securities shall have been the subject of:]

[1. Any administrative order issued under any state or federal securities law or regulation or a postal fraud order;]

[2. Any outstanding injunction, consent order or other legal directive for a securities violation of any state or federal securities law or regulation; or]

[3. Any court decision granting civil relief for a securities violation of any state or federal securities law or regulation; or shall have been convicted of any criminal violation of the federal securities or postal laws or regulation, the securities laws of any state, or criminal fraud or any felony.]

[(g) The entire exemption shall not be available upon the occurrence of any one of the following events:]

[1. Where a single sale is made to a person who is not qualified as an investor under paragraph (b) of this subsection;]

[2. Where a single offer is made to randomly selected offerees who do not qualify as an offeree under paragraph (b) of this subsection; or]

[3. Where there has been a willful violation of KRS 292.320.]

[Section 2. Pursuant to KRS 292.410(1)(q), the director having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following transaction is determined to be exempt from the registration provisions of KRS 292.340 through KRS 292.390.]

[(1) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, Rules 230.501-230.503 and either 230.505 or 230.506 as made effective in Release No. 33-6389 and which satisfies the following further conditions and limitations:]

[(a) Persons receiving commissions, finders fee, or other remuneration in connection with sales of securities in reliance on this regulation are not relieved of compliance with KRS 292.330.]

[(b) No exemption under this rule shall be available for the securities of any issuer, if any of the parties or interest described in Securities Act of 1933, Regulation A, Rule 230.252, Sections (c), (d), (e) or (f):]

[1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's law within

five (5) years prior to the commencement of the offering.]

[2. Has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.]

[3. Is currently subject to any state's administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of securities in reliance upon this exemption.]

[4. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.]

[5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.]

[6. The prohibitions of subparagraphs 1 through 3 and subparagraph 5 of this paragraph shall not apply if the party or interest subject to the disqualifying order is duly licensed to conduct securities related business in the state in which the administrative order or judgment was entered against such party or interest.]

[7. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.]

[(c) The issuer shall file with the Division of Securities a notice on Form D (17CFR239.550):]

[1. No later than fifteen (15) days after the first sale of securities to an investor in this state which results from an offer being made in reliance upon this exemption.]

[2. No later than thirty (30) days after the completion date of the offering of the issue.]

[3. Every six (6) months after the first sale of securities from the issue made in reliance on this regulation unless the final notice required by subparagraph 2 of this paragraph has been filed.]

[4. Every notice on Form D shall be manually signed by a person duly authorized by the issuer.]

[5. Any information furnished by the issuer to offerees shall be filed with the notice required pursuant to subparagraph 1 of this paragraph and, if such information is altered in any way during the course of the offering, the Division of Securities should be notified of such amendment within fifteen (15) days after an offer using such amended information.]

[6. If more than one (1) notice is required to

be filed pursuant to subparagraphs 1 through 3 of this paragraph, notices other than the original notice need only report the information required by Part C and any material change in the facts from those set forth in Parts A and B of the original notice.]

[(d) In all sales to nonaccredited investors the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that both of the following conditions are satisfied:]

[1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situations and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed twenty (20) percent of the investor's net worth (excluding principal residence, furnishings therein and personal automobiles) it is suitable.]

[2. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risk of the prospective investment.]

[(2) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of this state's securities law.]

[(3) Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of this Act, however, nothing in this limitation shall act as an election. Should for any reason, the offers and sales fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.]

[(4) In any proceeding involving this rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.]

[(5) In view of the objective of this rule and the purpose and policies underlying the securities act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.]

BALLARD W. CASSADY, JR., Commissioner  
RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: Oil and gas drillers, developers; indeterminable number affected. Also a very small number of out of state professional service corporations are brought under the exemptions.

(a) Direct and indirect costs or savings to those affected: Indeterminable. Oil and gas developers will have to register securities or find a new exemption.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Full registration for.

(2) Effects on the promulgating administrative body: Will permit greater control over an area of activity which creates many problems.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Problems with oil and gas make alternatives unworkable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The changes in this registration will abolish certain oil and gas exemptions, thereby requiring registration. Also, the federal Regulation D part of the regulation has been relocated in the regs. Other changes are insignificant grammatical changes.

Tiering:

Was tiering applied? Yes.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Financial Institutions**  
**Division of Securities**  
**(Proposed Amendment)**

**808 KAR 10:170. Exemption claims from securities registration; form.**

RELATES TO: KRS 292.400

PURSUANT TO: KRS [13.082,] 292.500(3)

NECESSITY AND FUNCTION: To outline the informational requirements and the format [form] for a claim of exemption from securities registration under subsections (9), (12) and (14) of KRS 292.400.

Section 1. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.400(9).

(1) The claim of exemption required to be filed pursuant to KRS 291.415(1) shall contain the following:



(a) The filing fee (payable to Kentucky State Treasurer);

(b) A declaration that the KRS 292.400(9) exemption will be relied upon;

(c) A sample copy of the security that will be issued;

(d) A copy of the Articles of Incorporation and By-laws of the issuer or the equivalent governing instruments;

(e) A prospectus, offering circular, or memorandum making full disclosure of material facts, including a discussion of all salient risk factors;

(f) A representation that the offerees and purchasers shall have access to information concerning the issuer;

(g) Copies of all advertising or other material to be distributed in connection with the offering;

(h) A copy of the subscription agreement or other similar agreement;

(i) A copy of any proposed agreement or proposed form of agreement with a securities broker-dealer or underwriter;

(j) A copy of the preliminary or definitive Trust Indenture and/or Trust Agreement, if any;

(k) An opinion of counsel attesting to the authority of the issuer to offer and sell the securities and stating that after the sale the securities will be valid, binding obligations of the issuer in accordance with the issuer's governing documents. A letter from an authorized officer or the governing body of the issuer may in certain circumstances be accepted in lieu of this opinion;

(1) A representation that any commissions or other remuneration to be paid in connection with the offer or sale of the securities will be paid only to persons licensed pursuant to KRS 292.330.

(2) The director may require additional information, documentation and undertakings or waive any of the above requirements. The director may require that the name and address of each purchaser and date of each such purchase be submitted to complete the filing.

(3) For a claim of exemption pursuant to KRS 292.400(9) for an offering of securities of a church or other religious institution, a proposed issuer should be in substantial compliance with the North American Securities Administrators Association's Guidelines for Offerings of Church Bonds relative to disclosure in offering circulars and financial condition (Commerce Clearing House Blue Sky Law Reporter).

Section 2. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.400(12).

(1) The claim of exemption required to be filed pursuant to KRS 292.415(1) shall contain the following:

(a) The filing fee of \$100 (payable to Kentucky State Treasurer);

(b) A declaration that the KRS 292.400(12) exemption will be relied upon;

(c) A sample copy of the security that will be issued;

(d) A copy of the Articles of Incorporation and By-laws of the issuer or the equivalent governing instruments;

(e) A prospectus, offering circular, or memorandum making full disclosure of material facts, including a discussion of all salient risk factors;

(f) A representation that the offerees and purchasers shall have access to information concerning the issuer;

(g) Current financial statements of the issuer;

(h) A copy of the subscription agreement or other similar agreement;

(i) A statement as to how the proceeds of the issue will be used; and

(j) A representation that any commission or other remuneration to be paid in connection with the offer or sale of the securities will be paid only to persons licensed pursuant to KRS 292.330.

(2) The director may require additional information and documentation or waive any of the above requirements. The director may require that the name and address of each purchaser and the date of each such purchase be submitted to complete the filing.

Section 3. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.400(14).

(1) The claim of exemption required to be filed pursuant to KRS 292.415(1) shall contain the following:

(a) The [claim of exemption shall be accompanied by the] filing fee of \$100 (payable to Kentucky State Treasurer) [required by KRS 292.415(2)];

(b) A declaration that the KRS 292.400(14) exemption will be relied upon; and

(c) A declaration as to how the issuer satisfies each of the specific requirements of KRS 292.400(14), which declaration shall be signed by a principal officer of the issuer.

(2) The director may require additional information, documentation or undertakings to be filed.

(3) The exemption shall be available for a period of five (5) years unless material changes regarding the issuer which relate to the statutory requirements of the exemption make the exemption unavailable. The \$100 filing fee shall be waived for the last four (4) years of the exemption period.

(4) The issuer will notify the director annually (approximately one (1) year from the effective date of the exemption) that the conditions of the exemption are still being complied with and that the issuer is still relying upon and claiming the exemption.

(5) If the exemption becomes unavailable at any time as a result of material changes affecting the issuer's statutory exemption, the issuer shall immediately notify the director.

BALLARD W. CASSADY, JR., Commissioner

RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: Persons claiming exemptions under Kentucky securities laws; number indeterminable.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: All this regulation does is to remove some excess words and direct all payments to be made to the Kentucky State Treasurer when payments are required. There are no substantive changes.

Tiering:

Was tiering applied? N/A

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

Division of Securities

(Proposed Amendment)

808 KAR 10:190. Securities registration exemptions for certain business transactions.

RELATES TO: KRS 292.410(1)

PURSUANT TO: KRS [13.082.] 292.500(3)

NECESSITY AND FUNCTION: To outline the informational requirements and the format [form] for a claim of exemption from securities registration under subsections (i) [, (j)] and (k) of KRS 292.410(1):

Section 1. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.410(1)(i).

(1) The claim of exemption required to be filed with the director under KRS 292.415(1), where an offeror claims an exemption under KRS 292.410(1)(i), shall include the following [contain the following]:

(a) The filing fee of \$100 (payable to Kentucky State Treasurer);

(b) A letter containing:

1. [(b)] A declaration that the KRS 292.410(1)(i) exemption will be relied upon;

2. [(c)] A representation that offers will be made to not more than twenty-five (25) persons

in this state during the period of twelve (12) consecutive months from the effective date of the exemption;

3. [(d)] A representation that no commission or other remuneration will be paid or given directly or indirectly for soliciting any prospective buyer in this state;

4. [(e)] A representation that the seller believes that all the buyers in this state are purchasing for investment;

5. [(f)] A representation that each buyer will sign an appropriate "investment intent letter," a copy of which shall be included in the claim of exemption, stating in part that the buyer is not taking with a view to distribution;

6. [(g)] A representation that securities to be issued will bear an appropriate restrictive legend, a copy of which shall be submitted with the claim of exemption;

7. A representation that the offerees and purchasers shall have access to information concerning the issuer;

8. A representation that no public advertising or solicitation will be employed in effecting the proposed transaction; and

[(c)] [(h)] A copy of the Articles of Incorporation, By-laws, limited partnership agreement, or other organizational document which reflects the security holders' rights;

[(d)] [(i)] A prospectus, offering circular, or memorandum making full disclosure of material facts, including a discussion of all salient risk factors;

[(e)] [(j)] Current financial statements of the issuer shall be filed with the director and contained in the disclosure document;

[(k)] A representation that the offerees and purchasers shall have access to information concerning the issuer;]

[(1)] A representation that no public advertising or solicitation will be employed in effecting the proposed transaction; and]

[(f)] [(m)] If available, a sample copy of the security.

(2) The director may [in particular cases] require additional information and undertakings or waive any of the above requirements. The director may require that the names and addresses of offerees, actual purchasers and the dates of such purchases be submitted to complete the claim of exemption.

[Section 2. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.410(1)(j).]

[(1)] A claim of exemption filed pursuant to KRS 292.415(1) shall contain:]

[(a)] The filing fee;]

[(b)] A declaration that the KRS 292.410(1)(j) exemption will be relied upon;]

[(c)] A copy of the preorganization certificate;]

[(d)] A representation that no commission or other remuneration will be paid or given directly or indirectly for soliciting the prospective subscribers;]

[(e)] A representation that the number of subscribers will not exceed twenty-five (25);]

[(f)] A representation that no payment is to be made for the security by any subscriber; and]

[(g)] A statement as to whether registration, or reliance upon a specific exemption, will ultimately be used to sell the security.]

[(2)] The director may require additional

information and documentation or waive any of the above requirements. The director may require that the name and address of each purchaser and the date of each such purchase be submitted to complete the filing.]

Section 2. [3.] The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.410(1)(k).

[(1) A claim of exemption filed pursuant to 292.415(1) shall contain:]

(1)(a) The filing fee of \$100 (payable to Kentucky State Treasurer);

(b) A letter containing:

1. [(b)] A declaration that the KRS 292.410(1)(k) exemption will be relied upon;

2. [(c)] A statement disclosing the circumstances under which the outstanding shares were originally placed with the existing security holders, which statement shall indicate whether the shares were issued pursuant to a registration statement or in reliance upon an exemption from registration;

3. [(e)] The names, addresses, and number of shares or rights held by existing security holders in this state unless such information is not readily available, in which event the director shall be so advised; and

4. [(f)] A representation as to whether or not a commission or other remuneration [(other than a standby commission)] is to be paid or to be given directly or indirectly for soliciting any security holder in this state.

(c) [(d)] A prospectus, offering circular, or memorandum making [such] full disclosure of material facts, including a discussion of all salient risk factors;

(2) The director may require additional information and undertakings [documentation] or waive any of the above requirements. [The director may require that the name and address of each purchaser and the date of each such purchase be submitted to complete the filing.]

BALLARD W. CASSADY, JR., Commissioner  
RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: Persons claiming exemption under KRS 292.410(1)(i), (j), and (k). Number affected is indeterminable.

(a) Direct and indirect costs or savings to those affected: Indeterminable

1. First year: Indeterminable

2. Continuing costs or savings: Indeterminable

3. Additional factors increasing or decreasing

costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No filing for persons claiming under KRS 292.410(1)(j). All others - no change.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? Yes

#### PUBLIC PROTECTION AND REGULATION CABINET

Department of Housing,  
Buildings and Construction  
(Proposed Amendment)

815 KAR 4:010. Elevators, dumbwaiters, escalators and moving walks standards.

RELATES TO: KRS 198B.400-198B.540 [198B.490]

PURSUANT TO: KRS 198B.490 [13.082, 336.620]

NECESSITY AND FUNCTION: KRS 336.620 authorizes the commissioner to make rules and regulations for the safety and inspection of elevators. The function of this regulation is to adopt safety standards which will insure that all elevators are reasonably safe for use by the citizens of this Commonwealth.

Section 1. Adoption of Code. The commissioner hereby adopts and incorporates by reference the American Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, published by and available from the American Society of Mechanical Engineers, 1983 [1981] edition, United Engineering Center, 345 East 47th Street, New York, New York 10017, which specifically details the equipment, materials, weights, gauges, lengths, widths, and quality of construction that will make elevators, escalators, and any other lifting or lowering device named in the Elevator Safety Act of 1974, reasonably safe, with the exception of [or] Annex F.

Section 2. Freight Elevators and Electric Powered Dumbwaiters. Application and specifications for freight elevators and electric powered dumbwaiters shall continue to be submitted to the department for approval. Freight elevators and electric powered dumbwaiters will be inspected upon completion of their installation. Nothing in this regulation shall require the annual inspection of freight

elevators or electric powered dumbwaiters now in existence.

CHARLES A. COTTON, Commissioner

MELVIN WILSON, Secretary

ADOPTED BY AGENCY: April 26, 1985

FILED WITH LRC: April 29, 1985 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on June 25, 1985 at 10 a.m., in the office of the Department of Housing, Buildings, and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by June 19, 1985, the hearing may be cancelled.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: N/A

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: N/A

Tiering:

Was tiering applied? N/A

#### CABINET FOR HUMAN RESOURCES Department for Health Services Division of Epidemiology (Proposed Amendment)

902 KAR 2:080. Sexually transmitted diseases [Venereal Disease].

RELATES TO: KRS 211.180, 214.010, 214.160, 214.170, 214.185 [402.120 to 402.180]

PURSUANT TO: KRS [13.082, 195.040,] 194.050, 211.090

NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet [Department] for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. The purpose of this regulation is to establish

uniform procedures for the diagnosis, prevention, treatment, and control of sexually transmitted diseases (STD) [venereal disease].

Section 1. Definitions. As used in this regulation: (1) "Approved serology laboratory" means a laboratory that has been evaluated and certified by the Cabinet [Department] for Human Resources for performing serological tests for syphilis, in compliance with Kentucky's [premarital and] prenatal laws (KRS [402.120 et seq., and] 214.160 et seq.).

(2) "Sexually transmitted diseases" (STD) ["Venereal Disease"] means syphilis, gonorrhea, chancroid, granuloma inguinale, lymphogranuloma venereum, chlamydia infections, genital herpes, non-specific urethritis (NSU), non-specific vaginitis (NSV) and acquired immune deficiency syndrome (AIDS).

(3) An "approved serology test" means the VDRL slide test or RPR 18 mm circle card test or other test approved by the Cabinet [Department] for Human Resources and performed as described in the current edition of the "Manual of Tests for Syphilis" published by the United States Public Health Service.

Section 2. Investigation and Enforcement. Only [authorized] personnel of the Cabinet [Department] for Human Resources and local health departments who are assigned to sexually transmitted disease control activities are empowered to carry out the prevention and control [administer and enforce the] provisions set forth in this regulation. Their duties shall include, among other things, the investigation of persons known to be or reasonably suspected of being infected with a sexually transmitted disease [venereal disease]. Such personnel are empowered to require any person reasonably suspected of having a sexually transmitted disease to have appropriate medical examination including laboratory testing. [Local health officers and authorized persons of the Department for Human Resources are hereby empowered and directed to make such examinations, including laboratory testing procedures, of persons reasonably suspected of having a venereal disease as may be necessary for carrying out this regulation].

Section 3. Medical Examination and Treatment [of Venereal Disease]. (1) Any person reasonably suspected of being infected with a sexually transmitted disease [venereal disease] shall undergo such medical examination as is necessary, including such laboratory testing procedures as are deemed advisable by the examining physician, to definitely determine the existence or non-existence of a sexually transmitted disease [venereal disease]. If such person is found to be infected with a sexually transmitted disease [venereal disease], or the potentiality for incubation exists, he or she shall undergo such treatment as may be determined adequate by the examining physician to render the person non-infectious, if it is possible to do so.

(2) Any person reasonably suspected of being infected with a sexually transmitted disease [venereal disease] who refuses to submit [himself] for examination or treatment as herein [hereinabove] provided shall be [considered delinquent and shall be] subject to quarantine

by the Cabinet [Department] for Human Resources or local health department to prevent sexual contact until [such time as] there is compliance with the provisions of subsection (1) of this section [are complied with].

Section 4. Sexually Transmitted Diseases [Venereal Disease] to be Reported. Upon diagnosis of a case of sexually transmitted disease [venereal disease], the physician or a person acting under the physician's order, shall report such case in a prescribed manner to the [his] local health department or to the Cabinet [Department] for Human Resources stating the infected person's name, address, age, sex, race, date of onset, and [for syphilis cases,] the name and stage of the disease; provided, however, that a reidentifiable code number assigned to the patient by the physician may be substituted in lieu of the patient's name and address and supplied upon request to personnel of the Cabinet for Human Resources or local health departments who are assigned to sexually transmitted disease control activities.

Section 5. Reports to be Confidential. (1) All information and reports concerning persons infected with a sexually transmitted disease [venereal disease] or suspected of being infected, or tested for or identified in an epidemiologic investigation for sexually transmitted disease [with a venereal disease] are hereby declared to be confidential and only [authorized] personnel of [the] local health departments, [concerned the physician retained by the patient concerned,] and the Cabinet [Department] for Human Resources who are assigned to sexually transmitted disease control activities and the physician retained by the patient shall have [be permitted] access to such records and information.

(2) Except for requests from licensed practicing physicians retained by the patient concerned and authorized health department personnel, information contained in sexually transmitted disease [venereal disease] records shall be released only upon written consent of the patient.

Section 6. Approved Serology Laboratories for [Premarital and] Prenatal Tests. [All laboratories licensed pursuant to KRS Chapter 333 to perform tests in the specialty of serology are hereby approved.] (1) [In the event the laboratory is exempted from licensure under KRS Chapter 333,] The laboratory must have as its director a physician licensed to practice medicine in Kentucky or a person who meets the requirements set forth in 902 KAR 11:030, Section 1(4)(f), or (6).

(2) All approved laboratories must maintain satisfactory performance in a serological test for syphilis proficiency program approved by the cabinet.

(a) Proficiency test results shall be reported on forms provided by the cabinet within seven (7) days after specimens are received. The following letter symbols are to be used:

N - Nonreactive  
W - Weakly Reactive  
R - Reactive

(b) Criteria for satisfactory test performance

are:

1. Agreement with results of reference laboratories on individual specimens - ninety (90) percent.

2. Reproducibility on duplicate samples - ninety (90) percent.

(3) Certificates of approval shall be issued annually by the Cabinet [Department] for Human Resources to all laboratories evaluated and certified by the Cabinet [Department] for Human Resources [that are not required to be licensed pursuant to KRS Chapter 333].

(4) All approved serology laboratories shall fully comply with all the provisions of Kentucky's [premarital and] prenatal laws and with the rules and regulations of the Cabinet [Department] for Human Resources.

Section 7. Laboratory Tests for Sexually Transmitted Diseases [Venereal Disease]. Whenever any laboratory in Kentucky performs a test for any sexually transmitted disease [venereal disease], the result if reactive or positive shall be reported within one (1) week thereafter to the Cabinet [Department] for Human Resources.

C. HERNANDEZ, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985 of their desire to appear and testify at the hearing. R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barry Waincott, M.D.

(1) Type and number of entities affected: Physicians (5,000), hospitals (122), medical laboratories (250), and local health departments (at least 120 sites)

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs or savings

2. Continuing costs or savings: No additional costs or savings

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional requirements

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings

2. Continuing costs or savings: No additional costs or savings

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements

(3) Assessment of anticipated effect on state and local revenues: State - none; Local - unknown

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable

(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: None known  
(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:  
None

Tiering:

Was tiering applied? No. Not appropriate

**CABINET FOR HUMAN RESOURCES  
Department for Health Services  
(Proposed Amendment)**

**902 KAR 8:020. Policies and procedures for Local health department operations.**

RELATES TO: KRS Chapter 212

PURSUANT TO: KRS 194.050, 211.090, 211.170, 211.180, 213.410

NECESSITY AND FUNCTION: KRS 211.170 directs the Cabinet for Human Resources to establish policies governing the activities of local health departments. This regulation adopts various manuals setting policies and standards for health departments.

Section 1. Local Health Policy Manual. The policies set forth in the April 15 [February 15], 1985, edition of the "Local Health Policy Manual" governing the maintenance and operation of local health departments are hereby adopted by reference.

Section 2. Financial Management Manual. The policies set forth in the April 15 [November 15], 1984, edition of the "Financial Management Manual" governing the operation of the financial management systems used by local health departments are hereby adopted by reference.

Section 3. Patient Services Reporting System Manual. The policies set forth in the May 1, 1984, edition of the "Patient Services Reporting System Manual" governing the collection of patient health/medical services delivered by local health departments are hereby adopted by reference.

Section 4. Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky. The policies and procedures set forth in the May 1, 1984, edition of the "Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky" governing the development and maintenance of medical records in local health departments are hereby adopted by reference.

Section 5. Planning Manual for Local Health Departments. The policies set forth in the March, 1985 [February, 1984], edition of the "Planning Manual for Local Health Departments" governing the annual program planning process and procedures of local health departments are hereby adopted by reference.

Section 6. Standards Manual for Local Health Departments. The policies set forth in the March, 1985 [May 15, 1984], edition of the

"Standards Manual for Local Health Departments" governing the programmatic operations of local health departments are hereby adopted by reference.

Section 7. Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report. The policies set forth in the September, 1982, edition of the "Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report" are hereby adopted by reference.

Section 8. On-Line Environmental Health Management Information System. The policies set forth in the February 14, 1984, edition of the "On-Line Environmental Health Management Information System" manual are hereby adopted by reference.

Section 9. Consumer Product Safety Commission's Hazardous Substances Labeling Guide. The policies set forth in the May 25, 1979, edition of the "Consumer Product Safety Commission's Hazardous Substances Labeling Guide" are hereby adopted by reference.

Section 10. Consumer Product Safety Commission's In-Depth Investigations Manual. The policies set forth in the January 28, 1983, edition of the "Consumer Product Safety Commission's In-Depth Investigations Manual" are hereby adopted by reference.

Section 11. MCH Maternity Manual. The policies set forth in the July 1, 1985 [May 11, 1984], edition of the "MCH Maternity Manual" governing the operation of the prenatal program conducted by local health departments are hereby adopted by reference.

Section 12. Sudden Infant Death Syndrome Program. The policies set forth in the January 1, 1985, edition of the "Sudden Infant Death Syndrome Program" manual governing the operation of the Sudden Infant Death Syndrome Program conducted by local health departments are hereby adopted by reference.

Section 13. Standards for Genetic Disease Testing, Counseling and Education Services Program. The policies set forth in the May 11, 1984, edition of the "Standards for Genetic Disease Testing, Counseling and Education Services Program" manual governing the operation of genetic disease testing and counseling clinics conducted by local health departments are hereby adopted by reference.

Section 14. Standards for Regional Pediatric Clinics. The policies set forth in the May 11, 1984, edition of the "Standards for Regional Pediatric Clinics" manual governing the operation of regional pediatric programs conducted by local health departments are hereby adopted by reference.

Section 15. Standards for Preventive Health Care in Children. The policies set forth in the

May 11, 1984, edition of the "Standards for Preventive Health Care in Children" manual governing the operation of well child programs conducted by local health departments are hereby adopted by reference.

Section 16. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

Section 17. Summary of Amendment. (1) In relation to Section 1 of this regulation relating to the Local Health Policy Manual, revise LHP 300-1 "Meetings of Local Boards of Health" to clarify the frequency of meetings for boards of health, the nature and extent of delegation to an executive committee, the definition of a quorum, the requirements of open meetings legislation to executive committees, and proxy representation and voting [add a new LHP "Appointment of Board of Health Members 300-7" to define the terms of office for county and district boards of health, define the phrase "until their successor is appointed," specify the nomination process for both county and district boards, and describe the process for removal and reinstatement of positions to county boards of health].

(2) In relation to Section 2 of this regulation relating to the Financial Management Manual, delete Pages 65-74 (undated) and substitute new Pages 65-74 dated 4-15-85 which fully define the contractual standards and the specific forms to be used, and require that all contracts be reviewed by the Department for Health Services. Delete Pages 75-78, the requirement for a contractual arrangement between District Boards of Health and the individuals who serve as District and Medical Directors.

(3) In relation to Section 5 of this regulation relating to the Planning Manual for Local Health Departments, this manual has been revised for FY 86. Revisions are limited to those for the purpose of clarity and to add or delete current guidelines of practice. Significant revisions are as follows:

(a) The Table of Contents was placed ahead of the Foreword following state publications standards of placement.

(b) Pages 5 and 6 were titled Priority Setting creating a new section.

(c) The service code example in Section IV is now the Cancer Program since it more accurately represents coding for the majority of program plans.

(d) In Section V, specific budget form numbers have been deleted as they are subject to change.

(e) The Planning Schedule has been revised as the significant activities in the planning process have been rescheduled.

(f) Under Categories of Medical Plans, reporting areas 712, 872, and 898 have received name changes, 878 has been deleted, and Preventive Block Grant 874 and Special Project Reporting Areas 4-7 have been added to create the opportunity for additional planning and reporting.

(g) Local health departments are now required to submit only two (2) sets of program plans instead of three (3).

(h) The line-item budget sheet has been revised in accordance with financial management guidelines.

(i) Several definitions have been rewritten or expanded throughout the manual for greater understanding of planning procedures.

(4) In relation to Section 6 of this regulation relating to the Standards Manual for Local Health Departments, this manual has been revised for FY 86. Revisions are limited to those for clarity and to add or delete content to accurately reflect current guidelines of acceptable practice in the conduct of medical and environmental programs. Significant revisions are as follows:

(a) Standards for Consumer Product Safety and Radiation Control have been removed because these programs are now administered by the Department for Health Services.

(b) The Venereal Disease Program Standards have been changed as follows:

1. The program name has been changed to Sexually Transmitted Disease Control;

2. Under performance criteria:

a. Minimum scope of services was revised according to Centers for Disease Control recommendations;

b. A section on Integration with Other Health Services was added;

3. The allocation of restricted funds to selected local health departments has been deleted since investigative personnel are now the responsibility of the Department for Health Services;

4. Revisions have been made in the Sample Plan to be consistent with the planning standard format.

(c) Regional Pediatric Standards - Local health departments will be required to use ICD codes in reporting services.

(d) The program plan outline included in the Prenatal Program Standards has been revised for the following reasons:

1. To allow for utilization of most recent target population figures, "Medicaid paid" figures and unmet need figures (provided to local staff) in establishing the in-need population to be served in each service area;

2. To provide clarification of the assessment process for determining what specific maternity care, prenatal clinical care, delivery and hospitalization should be provided within each service area.

(e) The Glaucoma Program Standards received very minor revisions including the following deletions relating to reporting which are no longer required:

1. Under Section III, B, 1, delete Number 15 (check if referred for medical supervision) will be checked if the patient is referred for diagnostic or treatment service outside the health department; and

2. Under Sample Plan Section IV, 2, delete (check Number 15 on the Patient Services Document for each individual referred for diagnostic or treatment services outside the health department).

(f) Standards for the Immunization Program have been revised for clarity without any changes in intent.

(g) Women, Infants and Children - The Additional Nutrition Education Problem Identification Section has been rewritten for clarity without any change in intent and the



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Records Section has been revised to include that documentation shall be made in the record for scheduled and missed appointments and food instrument pickup.

(h) Within the Cancer Program Standards the following changes were made:

1. "Women receiving services for sexually transmitted diseases" was added as a specific category targeted for cancer services;

2. All referrals will be reported using the ICD (Professional Diagnosis) codes; and

3. State allocations to local health departments will be increased from sixteen (16) dollars to twenty (20) dollars for each woman screened for cervical cancer in the forty-five (45) and over age group, and from eight (8) dollars to twelve (12) dollars for each screening in the under forty-five (45) age group.

(i) The Well Child and Early and Periodic Screening, Diagnosis and Treatment Standards have received very minor revisions for clarity without any change in intent except that the Clinic Plan will also include those children enrolled in an MCH Regional Pediatric Program.

(j) The major changes in the Hypertension Standards are as follows: some details relative to screening activities have been deleted since emphasis has been redirected from patient screening to patient monitoring; and monitoring personnel are now required to attend at least four (4) hours training annually.

(5) In relation to Section 11 of this regulation relating to the MCH Maternity Manual, the manual is being revised and republished on July 1, 1985, in its entirety. All page numbers have been changed so that each page under a specific tab is numbered consecutively. This will make it easier for local health department staff to add or delete pages when revisions are made. MCH Federal Objectives, as a Tab, has been deleted in that since the inception of Block Grant allocations, there are not MCH Federal Objectives as such. The Division of Maternal and Child Health is directed toward achieving the Objectives for the Nation, as stated under that Tab. Kentucky statistics have been updated to provide the latest figures for 1983. Also provided are figures for utilization in program planning for target populations. The most current Guidelines for Perinatal Care, written by the American Academy of Pediatrics and American College of Obstetrics and Gynecologists, has been cited as reference for Standards of Practice in Maternity Care, under that Tab. Clarification of "at risk population" having repeat lab tests, VDRL and GC at thirty-six (36) weeks, is provided in Minimum Standards of Practice, under that Tab. Addition of optional administration of antepartum RhoGam is provided in Minimum Standards of Practice, under that Tab. Throughout the manual, reference to tracking abnormal laboratory findings has been revised:

(a) To delete use of roman numerals in delineating Pap Smear results indicative of need for Obstetrician referral; revision to reflect "any degree of dysplasia" to be referred to Obstetrician within six (6) weeks.

(b) To delete utilization of Rubella titer less than 1:8 for indication of need for vaccine; revision to reflect: patients who lack Rubella immunity. This is defined in Laboratory Tests Tab. Rubella Guidelines to be documentation of vaccine given or any detectable

antibody in a properly controlled test.

Changes also are being made for the purpose of clarification (in response to numerous inquiries from local health department staff members). To provide the most up-to-date technical information which is in accordance with current guidelines for medical/clinical practice.

C. HERNANDEZ, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985, of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Regulation Number: 902 KAR 8:020, Section 1 (LHP 300-1)

Agency Contact Person: Phillip R. Spangler

(1) Type and number of entities affected: 42.

(a) Direct and indirect costs or savings to those affected: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. N/A

REGULATORY IMPACT ANALYSIS

Regulation Number: 902 KAR 8:020, Section 2 (Financial Management Manual 65-74)

Agency Contact Person: Philip R. Spangler

(1) Type and number of entities affected: 19 districts and 21 county health departments.

(a) Direct and indirect costs or savings to those affected:

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1. First year: Minor costs for processing will be more than offset by reduction in contract costs due to reduced rates or elimination of unnecessary contracts.

2. Continuing costs or savings: Same as 1

3. Additional factors increasing or decreasing costs (note any effects upon competition): Competitive bidding will tend to decrease costs.

(b) Reporting and paperwork requirements: Requires that all contracts be reviewed but this is considered necessary.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Will require several weeks of staff time for review and follow up. Cost savings will occur locally.

2. Continuing costs or savings: Same as 1.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Increase workload in reviewing all contracts but is considered a necessary responsibility.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Other alternatives not appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No.

REGULATORY IMPACT ANALYSIS

Regulation Number: 902 KAR 8:020, Section 2 (Financial Management Manual)

Agency Contact Person: Philip R. Spangler

(1) Type and number of entities affected: District health departments - 19.

(a) Direct and indirect costs or savings to those affected:

1. First year: Insignificant amount.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Eliminates the necessity of preparing the contract forms for District and/or Medical Directors.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Insignificant amount.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The time required to process the contracts by the Department for Health Services can be redirected.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: The employment of District and Medical Directors will be governed by 902 KAR 8:030 Merit System for Local Health Departments.

Tiering:

Was tiering applied? No. N/A

REGULATORY IMPACT ANALYSIS

Regulation Number: 902 KAR 8:020, Section 5 (Planning Manual)

Agency Contact Person: Philip R. Spangler

(1) Type and number of entities affected: 42 Local Health Departments.

(a) Direct and indirect costs or savings to those affected: Insignificant

1. First year: Insignificant

2. Continuing costs or savings: Insignificant

3. Additional factors increasing or decreasing costs (note any effects upon competition): Insignificant

(b) Reporting and paperwork requirements: No additional.

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: If significant number of local health departments utilize all available reporting areas, slight increase in paperwork is possible.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: None were considered. Revisions were necessary to update manual.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. N/A

REGULATORY IMPACT ANALYSIS

Regulation Number: 902 KAR 8:020, Section 6 (Standards Manual)

Agency Contact Person: Philip R. Spangler

(1) Type and number of entities affected: 42 Local Health Departments.

(a) Direct and indirect costs or savings to those affected: Minimal

1. First year: Minimal

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing

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costs (note any effects upon competition): Minimal

(b) Reporting and paperwork requirements: Additional reporting in some areas will be offset by reduction in paperwork in other programmatic areas..

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Changes in Cancer Standards will result in a significant increase in the transfer of cancer funds to local health departments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Revising manual was determined to be most economical way of notifying health delivery personnel regarding recent changes in the state of the art.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. N/A

REGULATORY IMPACT ANALYSIS

Regulation Number: 902 KAR 8:020, Section 11 (MCH Maternity Manual)

Agency Contact Person: Clarence P. Marshall or Linda Blackburn

(1) Type and number of entities affected: 42 Local Health Departments.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None added.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None added.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Tiering not applicable.

CABINET FOR HUMAN RESOURCES  
Department for Health Services  
(Proposed Amendment)

902 KAR 12:070. "Means Test" pursuant to the "Patient Liability Act of 1978."

RELATES TO: KRS 210.700 to 210.760

PURSUANT TO: KRS 13A.210, 210.710, 210.750

NECESSITY AND FUNCTION: KRS 210.710 authorizes the Secretary for Human Resources to adopt a "Means Test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded. The function of this regulation is to adopt a "Means Test" in compliance with KRS 210.710 to KRS 210.760.

Section 1. Means Test. The Cabinet for Human Resources hereby adopts the following uniform method for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at facilities operated or utilized by the Cabinet for Human Resources for the mentally ill or mentally retarded.

(1) Ascertain the entire financial resources available to the patient or the person responsible for the patient as follows:

(a) Insurance and third party payors, including, but not limited to Medicare, Medicaid and all other governmental and private programs or payors;

(b) Income received, or expected to be received during the period of hospitalization, including:

1. Self-employed gross revenues, less operating expenses;

2. Salaried and waged hourly employees gross income;

3. Interest and dividend income;

4. Rental income;

5. Royalties;

6. Alimony; and

7. Any other similar sources of income.

(c) Assets including, but not limited to:

1. Cash, checking accounts, savings accounts, certificates of deposit;

2. Stocks and bonds at market value; and

3. All other property except as otherwise exempted by law.

(d) Benefit and support payments received or expected to be received during the period of hospitalization, including, but not limited to:

1. Social Security;

2. Veterans Pension;

3. Railroad Retirement;

4. United Mine Workers Pension;

5. Supplemental Security Income;

6. Retirement; and

7. Any other similar sources of benefits or support payments.

(2) After ascertaining the entire financial resources of the patient, apply Table I, II, or

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III, as appropriate. The ability to pay, of the patient or person responsible for the patient, shall not exceed the total daily charges, less available Medicare, Medicaid, CHAMPUS, insurance and other benefits. Any overpayments resulting from application of the ability to pay "Means Test" by the patient or person responsible for the patient shall be refunded.

TABLE I ABILITY TO PAY INCOME TABLE

Size of Family	*Gross Income Protected For Basic Maintenance
1	\$ 7,183
2	11,656
3	15,861
4	19,155
5	21,982
6	24,844

\*Bureau of Labor Statistics Standards, South non-metropolitan area (February, 1984) used as basis.

For each additional family member, add \$3,100.  
Subtract from excess:  
(a) Applicable taxes, social security, retirement.  
(b) Any unpaid medical/dental bills.  
(c) Any extraordinary or involuntary expenses.

TABLE II ABILITY TO PAY ASSETS TABLE

Size of Family	*Assets Protected
1	<u>\$ 1,600</u> [1,500]
2	<u>3,200</u> [3,000]
3	<u>3,250</u> [3,050]
4	<u>3,300</u> [3,100]

\*Per Title XIX Federal Guidelines.

For each additional family member add fifty (50) dollars.

Prorate excess by number of family members.  
Excess asset payments may be spread over one (1) to twelve (12) months if patient or person responsible for the patient's financial situation warrants special consideration or if the patient is discharged before paying all excess assets.

TABLE III ABILITY TO PAY BENEFIT AND SUPPORT PAYMENT TABLE

\*Normal Disregards:  
Personal Spending \$ 25 per month  
Ineligible Spouse 192 [183] per month  
Monthly Medicare Part B Insurance Premium  
\*Title XIX Federal Guidelines.

If benefit and support payments are the sole sources of income or the principal sources of income to sustain the livelihood of the patient's immediate family (living in household) then an amount in addition to the normal disregards shall be excluded so as to meet the basic needs of food, clothing, and shelter including continuing ownership of a homestead if sufficient funds are available.

The patient or person responsible for the patient who receives benefits (Social Security, etc.) or support payments (child support, etc.) intended for the board, maintenance, and treatment of a patient shall assign or pay such amount, less the above mentioned disregards and exclusions to the respective health services

facility.

(3) In the event the ability to pay payment as determined from Table III creates an undue hardship, the patient or person responsible for the patient may request an administrative review by the departmental collections officer.

DENNIS D. BOYD, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on June 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by June 16, 1985: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ken Fiser

(1) Type and number of entities affected:  
(a) Direct and indirect costs or savings to those affected: Seven facilities for the mentally ill or mentally retarded.

1. First year:  
2. Continuing costs or savings:  
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: N/A  
(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings: N/A  
1. First year: \$30,000 to \$35,000 (savings)  
2. Continuing costs or savings: \$30,000 to \$35,000 (savings)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: N/A  
(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: Previously accomplished by Administrative Order

Tiering: This is to comply with House Bill 534  
Was tiering applied? Yes. Based on ability to pay.

## CABINET FOR HUMAN RESOURCES Department for Mental Health and Mental Retardation Services (Proposed Amendment)

902 KAR 12:080. Policies and procedures for mental health/mental retardation facilities.

RELATES TO: KRS Chapter 210

PURSUANT TO: KRS 210.010

NECESSITY AND FUNCTION: KRS 210.010 directs the Secretary of the Cabinet for Human Resources

to prescribe regulations for the institutions under the control of the cabinet. The function of this regulation is to adopt policies and procedures for such institutions.

Section 1. Oakwood Policy Manual. The policies set forth in the May 1 [April 1], 1985, edition of the "Oakwood Policy Manual" consisting of three (3) volumes relating to the operation of Oakwood ICF-MR Facility are hereby adopted by reference.

Section 2. Hazelwood Policy Manual. The policies and procedures set forth in the May 1 [April 1], 1985, edition of the "Hazelwood Policy Manual" consisting of two (2) volumes relating to the operation of Hazelwood ICF-MR Facility are hereby adopted by reference.

Section 3. Central State Hospital ICF-MR Policy Manual. The policies and procedures set forth in the May 1, 1985 [May 1, 1984], edition of the "Central State Hospital ICF-MR Policy Manual" consisting of two (2) volumes relating to the operation of Central State Hospital ICF-MR Facility are hereby adopted by reference.

Section 4. Eastern State Hospital Policy Manual. The policies and procedures set forth in the May 1, [April 1], 1985, edition of the "Eastern State Hospital Policy Manual" consisting of twenty-one (21) volumes relating to the operation of Eastern State Hospital Facility are hereby adopted by reference.

Section 5. Central State Hospital Policy Manual. The policies and procedures set forth in the May 1 [April 1], 1985, edition of the "Central State Hospital Policy Manual" consisting of nineteen (19) volumes relating to the operation of Central State Hospital Facility are hereby adopted by reference.

Section 6. Western State Hospital Policy Manual. The policies and procedures set forth in the May 1 [April 1], 1985, edition of the "Western State Hospital Policy Manual" consisting of thirty-one (31) volumes relating to the operation of Western State Hospital Facility are hereby adopted by reference.

Section 7. Glasgow ICF Policy Manual. The policies and procedures set forth in the May 1, 1985 [May 1, 1984], edition of the "Glasgow ICF Policy Manual" consisting of twelve (12) volumes relating to the operation of Glasgow ICF Facility are hereby adopted by reference.

Section 8. Western State Hospital ICF Policy Manual. The policies and procedures set forth in the May 1 [April 1], 1985, edition of the "Western State Hospital ICF Policy Manual" consisting of nine (9) volumes relating to the operation of Western State Hospital ICF Facility are hereby adopted by reference.

Section 9. Volta Policy Manual. The policies and procedures set forth in the May 1, 1985 [September 1, 1984], edition of the "Volta Policy Manual" consisting of one (1) volume relating to the operation of Volta Facility are hereby adopted by reference.

Section 10. Kentucky Correctional Psychiatric

Center Policy Manual. The policies and procedures set forth in the May 1 [April 1], 1985, edition of the "Kentucky Correctional Psychiatric Center Policy Manual" consisting of thirteen (13) volumes relating to the operation of Kentucky Correctional Psychiatric Center Facility are hereby adopted by reference.

Section 11. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

Section 12. Summary of Amendment.  
Section 1 is revised as follows:

OAKWOOD POLICY MANUAL - A-1

DST 07 #34 Time and attendance - policy to provide uniform procedure

DST 07 #35 Inclement Weather - policy to insure staff attendance during bad weather.

Section 2 is revised as follows:

HAZELWOOD POLICY MANUAL - B-1

87-3-1 #1B Chief Executive Officer  
This is a policy update and the policy itself is required by ICF/MR regulations. Federal #W 98.

87-3-1 #3C Human Rights Committee  
Policy has been revised to more accurately reflect facility's current practice and to better comply with ACMRDD Standards - under committee membership (item #2) and reporting alleged abuse to the Human Rights Chairperson (item #6).

87-3-5 #3C Incident Report  
This is a policy and procedure update due to changes in facility forms as well as procedures for handling report of resident incidents.

HAZELWOOD POLICY MANUAL - B-2

#40 is replaced with new time and attendance to provide uniform procedure

44 is replaced with new inclement weather to insure staff attendance during bad weather

87-6-7 #4A Resident Discipline  
This is a policy revision. The policy is required by Federal ICF/MR regulations as well as ACMRDD standards. The policy addresses basic guidelines for interaction and involvement of residents and staff during basic daily activities.

# ADMINISTRATIVE REGISTER - 1927

87-9-2 #2C Transfer of Facility Personnel  
This is a policy and procedure update. It clarifies the procedures which employees in the facility will follow regarding employee transfers to other shifts or departments.

Section 3 is revised as follows:

## CENTRAL STATE HOSPITAL ICF-MR POLICY MANUAL

C 4-17 #25 Time and attendance policy to provide uniform procedure

C 4-17 #26 Inclement weather policy to insure staff attendance during bad weather

Section 4 is revised as follows:

## EASTERN STATE HOSPITAL POLICY MANUAL - D2 - Section II

#16 Time and attendance policy to provide uniform procedure

#17 Inclement weather policy to insure staff attendance during bad weather

## EASTERN STATE HOSPITAL POLICY MANUAL - D19 - LAUNDRY AND CLOTHING DEPARTMENT

D19 Replace volume D19 with new manual

The following changes are made in this volume

a. Table of Contents - Add Quality Assurance - Page 15

b. Introduction (A brief list of duties) Delete "linen request" and "linen control" as they are not pertinent to a list of duties and are covered in other policies.

c. Organizational Chart - Add a block for the "Director."

p.4 Policy on Purchase of Clothing - In paragraph (1) delete "Departmental" as there is no longer such a document as Departmental Purchase Orders.

p.5 Policy on Laundry Preparation - Paragraph 7, 8 & 9 delete references to DeBoor Laundry and change to "contract laundry service."

Appendix - Add hospital name to forms.

p.5 & I Laundry Pins - Delete all reference to laundry pins. Their use is discontinued as a safety hazard.

p.15 Add new policy - Laundry & Clothing Quality Assurance Program.

## EASTERN STATE HOSPITAL POLICY MANUAL - D1

Section 2 Approval Sheet for Manual. This needs to replace previous one in the front of the manual.

Section 2 p.28 Admission, Treatment and Billing of United States Veterans. The attached revised policy reflects changes in the Veterans Administration Hospital's procedures for accepting referrals for veterans who may be eligible for treatment there. The V.A. is requiring a bit more information, as reflected in #3, A-3.

Section 2 p.33 Speech, Language and Hearing Services. The attached policy replaces the previous policy in Section 2, page 33. Hearing screening is now a part of the patient's initial work-up and will be performed in the Dental Clinic at the time the patient has a dental examination. There is no charge in the way referrals for speech therapy are handled.

Section 2 p.14A The revised Code Blue policy replaces page 14-A, Volume D1. Please note that item 9 has been rewritten to distinguish between non-emergency transportation needs and emergency transportation needs.

Section 5 is revised as follows:

## CENTRAL STATE HOSPITAL POLICY MANUAL - E-1

Section X #19 Time and attendance policy to provide uniform procedure

Section X #20 Inclement weather policy to insure staff attendance during bad weather

## Section B - Management Section

No. 11 This policy has been revised to be in accordance with the procedure. The last paragraph was added by a requirement of the Joint Commission.

## Section C - Fire & Safety Manual

No. 2 Policy has been revised to have used needles removed from the plastic syringe and destroyed in the hypodermic syringe safety device in the medication rooms. A red disposal container containing the used plastic syringes will be sealed with tape around the top and disposed of by Housekeeping staff.

# ADMINISTRATIVE REGISTER - 1928

No. 3 New policy added to the Fire & Safety Section as required by Joint Commission.

## Section E - Medical Services

No. 3 New policy added to the Medical Services to be in compliance with the Joint Commission.

## Section X - Personnel

No. 2 Policy revised to meet up with the standards of the Joint Commission.

Section 6 is revised as follows:

## WESTERN STATE HOSPITAL POLICY MANUAL

F1 #10 is replaced with new Inclement Weather Policy to insure staff attendance during bad weather.

F14 #38 new policy on Time and Attendance policy to provide uniform procedure.

Section 7 is revised as follows:

## GLASGOW ICF POLICY MANUAL

G12 p.12 a & b new policy added - Time and Attendance to provide uniform procedure

p.12c new policy added - Inclement Weather to insure staff attendance during bad weather

Section 8 is revised as follows:

## WESTERN STATE HOSPITAL ICF POLICY MANUAL - H-1

#XXVIII New Time and Attendance policy to provide uniform procedure

#XXIX New Inclement Weather policy to insure staff attendance during bad weather

Section 9 is revised as follows:

## VOLTA POLICY MANUAL I-1

### Personnel section:

New policy on Time & Attendance policy to provide uniform procedure  
New policy on Inclement Weather policy to insure staff attendance during bad weather

Section 10 is revised as follows:

## KENTUCKY CORRECTIONAL PSYCHIATRIC CENTER POLICY MANUAL - J-1

Section A Inclement Weather Hazard or Emergency is replaced with Inclement Weather policy to insure staff attendance during bad weather.

Section A New policy added on Time & Attendance policy to provide uniform procedure.

[Section 1 is revised as follows:

## OAKWOOD POLICY MANUAL - A-1 - Volume I

DST-0-1 #3 Revised Departmental Organizational Chart

Attachment Only  
DST-0-2 #5C Requires written reports to be submitted to IDT Staffing Chairman earlier

## OAKWOOD POLICY MANUAL - A-3 - Volume III

DST-2-2 #33C Increases accountability and security of medications administered in the cottage.

DST-2-5 #2B Adjusts Pharmacy hours of operation.

#25B Increases accountability and security of drug deliveries.

#27 New Policy - Insures control of cottage and infirmery medications on weekends and holidays, extra doses, and PRN's.

DST-3-6 #1B Adjusted to reflect coordinative services of all recreation programs.

## HAZELWOOD POLICY MANUAL - B - Volume I

87-1-1 #1A Policy & Procedure Manuals:  
This policy was revised to now state the Executive Committee is primarily responsible for the development, review and revision of all facility policies and procedures.

87-1-2 #3 Program Evaluation:  
This new policy initiates a program by which the previous year's activities shall be evaluated and utilized in planning the coming year's activities. This shall be from a wide-base of information involving activities inside the facility and outside the facility with a primary focus on the results of quality of service to our residents. A program evaluation will enable us to better plan to meet the needs of our residents in future managerial activities.

87-1-3 #4C Resident/Guardian Complaint:  
Policy revision needed to better establish time limits on the responses and resolution of the complaint.

87-2-1 1E Organization of Services:  
Licensing & Regulation require a policy on organization of services. This policy has been updated in order to better exemplify the current organization of services at Hazelwood.

The attachment to the above policy is an update in the current Governing Body for all Department for Mental Health and Mental Retardation Services facilities.



# ADMINISTRATIVE REGISTER - 1929

87-3-1 #5 Staff-Resident Communication:  
This is a new policy. Licensing and Regulation require a policy and procedure on communications within the facility involving both staff and residents. This policy indicates required communications in other licensure regulations and the requirements of documentation for necessary meetings or formalized communication.

87-4-1 #11 Telephone Usage:  
This new policy was needed for proper utilization of the facility telephone system and keeping personal calls to a minimum, thus freeing lines for calls relating to facility business.

87-4-4 #3C Sorting of Linen and Clothing:  
The revision in this policy is due to the diapers being furnished by National Linen Service Contract.

87-4-4 #4B Pick-Up of Soiled Linen and Clothing:  
The revision in this policy is due to the upholstering being moved to the Physical Therapy Department.

87-4-4 #6A Condemning of Linen, Clothing and Mending:  
The revision in this policy is due to the upholstering work being assigned to the P.T. Department.

87-4-4 #13B Isolation:  
This policy was revised because of the diapers being furnished by National Linen Service Contract.

87-4-4 #20A Preparing Residents' Soiled Clothing for Laundering:  
This policy was revised because a washing machine with a larger capacity was installed.

## B - VOLUME II

87-5-1 #2C An attachment to the Medical Services policy which is an update in the medical agreement between Hazelwood and NKC, Inc.

87-5-1 #2C An attachment to the Medical Services policy which is an update of the medical agreement between Hazelwood and Sts. Mary & Elizabeth Hospital.

Section 4 is revised as follows:

## EASTERN STATE HOSPITAL POLICY MANUAL

### Volume D1

Section 1, #48 The clarification "with or without the patient's consent" has been added to the definition of "physical abuse - sexual involvement."

### Volume D1

Section 2, #9 This policy is repealed.

### Volume D1

Section 2, #15 The clarification "with or without the patient's consent" has been added to the definition of "physical abuse - sexual involvement."

### Volume D1

Section 2, #39 "Inclement Weather to Patients" is added for patient protection during inclement weather when conditions are unsafe for patients to leave the wards unescorted.

Section 6 is revised as follows:

## WESTERN STATE HOSPITAL POLICY MANUAL - F15

#IV Policy revised to change employee classification of Health Aide to reflect the new classification of Patient Aide.

#V Policy deleted - initial training is no longer given.

#XIII Policy revised to show new processing route for tuition assistance applications.

#XVI Policy revised to require monthly reports.

F-26 Pharmaceutical Services  
Approved sheet for updated material.  
Cover sheet - Philosophy and purpose of pharmacy.  
Organization chart updated.

Section II #19 Revised list of drugs in the mini drug room.

Section II #22 Changed to show that the Maintenance Department delivers drugs since the Transportation Department has been dissolved.

Section II #26 Delete Formulary policy #26.

Section I #9 Policy on compensatory time revised to agree with personnel.

#7 Policy revised to include an intra-departmental monitor in the quality assurance program.

Section II #9 Policy revised to show change in pharmacy hours.

Section VIII #1 Policy revised to add Merck Manual to the reference material.

Section V Revised list of authorized persons who can write prescriptions.

Section IX #1 Revision of policy to require employees to see health nurse for drugs for personal use.

### F-31

Section IV #17 Policy revised to prevent patients from coming onto wards carrying dangerous weapons.

Section 5 is revised as follows:

## CENTRAL STATE HOSPITAL POLICY MANUAL - E1

Section B 9A Content Sheet:  
Section 9A added to the content sheet.

9A This policy & procedure was developed because the use of regular incident reporting did not always result in the causative agent or the name of the person committing the

# ADMINISTRATIVE REGISTER - 1930

error. This new policy & procedure clearly delineates causes, name of person discovering the error, name of person committing the error, and it completed with the action taken by the supervisor.

The new form will also lend itself well to a statistical analysis of medication errors. This analysis will provide a basis for both corrective action & recommendations for the eradication or alleviation of the errors.

- 10 Policy revised (procedure #12) to make reference to policy HH 5.10 on how to handle a Code I for an employee. The older procedure did not clearly state how the forms were to be distributed if a Code I was called.
- #15 Policy revised so that procedure #2 makes the supervisor responsible for waking employees found sleeping.

## Section C

- #1 Fire & Safety Manual:  
Replaces former fire and safety manual for the following reasons:  
Additions:  
(1) To include Hospital policy on accident/incident reporting.  
(2) To include procedure for calling a "Manpower Emergency."  
(3) To include procedure for calling a "Medical Emergency (Code One)."  
Changes:  
Additional changes were made to clarify and bring written procedures in line with proven safety practices.

## Section D - Clinical Staff

Pages 1, 19 & 27 The Committee needed to make changes in order to be in line with the re-organization February of 1984.

## Section F - Dental Services

- #5 New policy for dental treatment of Hepatitis B patients & carriers. During the past year there has been an increased awareness of the risk of Hepatitis B carriers among our hospital population. This awareness has prompted concern about transmission of the Hepatitis B virus to patients & staff in the dental clinic environment. Dental equipment presents a

special sterilization problem with respect to the Hepatitis B virus.

## Section G - Nursing Services

- #5 The old nurse practice act needed to be removed from the policy and procedure manual.

Licensure in Kentucky is mandatory. This new regulation is in compliance with Kentucky licensure regulations.

## Section Z - Quality Assurance

- #1 QA Plan/Program reviewed and revised yearly. Our QA Plan has been reviewed but not revised until November 1984. The Plan has been rewritten to provide of for the inclusion of the QA committees that have been established in the past on each Ward and in every Department. Those committees are functioning appropriately and follow JCAH guidelines. The revised plan provides for a clear, concise QA program with responsibilities and actions more clearly delineated than the previous plan.

## Section FF - Utilization Review & Medical Care Evaluation Plan of Central State Hospital

The U.R. Committee reviewed and revised the methods of review Part A. This was in the interest of assuring quality care for the patients.

Under Methods of Review, Part B, Admission Review: "In the Patient Review Coordinator's absence, an alternate will be appointed to review admissions."

Under IV. Organization of Committee, the second paragraph of Part A was reworded to improve classification.

Remove Section FF #2 - This policy is now combined in FF #1.

## Section HH - Treatment Program

No. 4.40  
& Checklist

The Case Manger Responsibilities section of the Discharge Checklist has been revised to include address, type of living arrangement and risk factor. Made at the request of Seven Counties for computer information to be used in

# ADMINISTRATIVE REGISTER - 1931

the tracking system. The risk factor will identify "high risk" patients for more intense follow-up by SCS upon discharge from the hospital.

The Nursing Responsibilities section if the checklist has been revised to include the notification of Vocational Rehabilitation upon discharge to current information on patients.

The Policy, No. 8 has been revised to reflect these changes as needed. The new Code I policy & procedure clearly states the responsibilities of each rescuer. Reports had been sent to Administration that the professional staff needed inservice & guidance in how to respond to medical emergencies.

No. 5.10

Section HH - Crash Cart Medications Behind No. 5.10 The Clinical Executive Committee recommended an updated list of medications on the crash cart for emergencies.

Section HH - Treatment Program No. 6.70 Revised Page 2 and added No. 20, to prevent sexual assault with female patients.

Form - Restraint & Seclusion Record Placed behind HH 6.70 Form changed to more efficiently meet standard in documentation especially concerning nursing care and length of time patient is under intensive observation and care.

Form - Interdisciplinary Progress Notes Placed Behind HH 8.60 The Clinical Executive Committee, becoming more legally conscious requested that time be clearly stated on the progress note. Discipline column was added because we could not keep up with 8 different colored pens for all disciplines to use. Problem number was added to assist staff in charting with the guidelines of problem oriented charting. The revised policy assures an implemented plan of treatment for all patients but reserves the Master Treatment Plan for those patients continuing hospitalization 10 days and beyond. This revision should avoid unnecessary

No. 8.80

No. 10.90

documentation and enhance staff availability for implementing treatment services.

The care of the epileptic patient needed to be revised and the Clinical Director requested a report of epileptic seizure form be used. The hospital had recently lost a case where staff had not clearly documented care of a patient who died after a seizure.

## CENTRAL STATE HOSPITAL POLICY MANUAL - E2

Section 5 #5 The change from a 30-day to a 14-day M.A.R. (medication administrative record) necessitated these additions to the M.A.R. procedure 5.5 of the Nursing Manual.

Section 8 is revised as follows:

## WESTERN STATE HOSPITAL INTERMEDIATE CARE FACILITY POLICY MANUAL - H-4

H4 Section I P.9 Revised to change name of chief nurse.  
H4 Section I P.10 Revised to change name of chief nurse.  
H4 Section I P.11 Revised to change name of chief nurse.  
H4 #8 P.1 Revised to change ward # to Ward 31-1.  
H4 #9 Revised to 11-7 shift to read 11:00 p.m. to 7:00 a.m.  
H4 #15 Revised to change ward # to Ward 31-1, and to change 11-7 shift to read 11:00 p.m. to 7:00 a.m.  
H4 #29 Revised to delete WPPR performance raises.  
H4 #46 Revised to add statement if an employee does not work extra after three (3) requests the employee's name will be dropped from the list.  
H4 Section III 7-3 Shift Duties - revised to explain current duties.  
H4 Section III 3-11 Shift Duties - revised to explain current duties.  
H4 Section III 11-7 Shift Duties - revised to explain current duties.  
H4 #40 Revised because new parking permits were issued.  
H3 Table of Contents - Revised to include new material.  
H3 Section IV - Procedure 14 - new bowel training program.  
H3 Section IV - Procedure 15 - new bladder training program.  
H8 Section B - Social Service Assessment - revised to include more information.  
H8 Section B - Patient Admissions - Item 4 - revised to show current information.

## WESTERN STATE HOSPITAL INTERMEDIATE CARE FACILITY POLICY MANUAL - H10

A new Diet Manual is developed utilizing part of

# ADMINISTRATIVE REGISTER - 1932

the Diet Manual of Western State Hospital and adding a section on "Supplemental Feedings."

Section 10 is revised as follows:

## KENTUCKY CORRECTIONAL PSYCHIATRIC CENTER POLICY MANUAL - J9

- J9-1- policy revised to require utilization of a new referral form.
- J9-2- policy revised to require use of Intake Summary Form for more useful information.
- J9-3- policy title is changed from Securing Patient Information and Securing Patient Information from other agencies.
- J9-4- a new policy listing conditions for admission to and discharge from other agencies.
- J9-5- Admission for Continuing Treatment is revised to show the role of the Director of Outpatient Services, and the Medical Records Department.
- J9-6- Policy revised to show records to be maintained by Outpatient Services.
- J9-7- Policy revised to require social worker statement and the signature of supervisor for non-privileged staff.
- J9-8- Psychosocial History Update: This policy was revised to include medical, family and institutional information and to require signature of supervisor for non-privileged staff.
- J9-9- Treatment Planning: Minor revisions were made in the policy to more accurately reflect the intent of treatment planning.
- J9-10- Treatment Planning Reviews: This policy was changed to standardize the frequency of treatment plan reviews as required by JCAH standards.
- J9-11, J9-12, J9-13, J9-14 had no changes.
- J9-15- Discharge Summary: Policy and procedure was edited for clarity and added the requirement of co-signature of the supervisor for non-privileged staff.
- J9-16- Discharge Procedures: This policy is a new policy to establish a standard procedure for the discharge of patients from the service.
- J9-17- Staff Services Log: The policy statement was revised, deleting "serve as a method to keep notes for entering into medical charts," this being done to reduce duplication of documentation.
- J9-18- Monthly Report & Statistical Summary: The requirements for the monthly report have been changed by the administration during the year and this policy was revised to correspond to the administrations requirements.
- J9-19- Patient Census - No change.

J9-20- Personnel Policy - No change.

OPS Policy & Procedure - "Transfer Summary & Update" has been deleted.

## KENTUCKY CORRECTIONAL PSYCHIATRIC CENTER POLICY MANUAL - J-1

- J-1 A44 Revised policy to restrict the back door to the nurses station as a security precaution.
- J-1 B33 Revised to restrict the number of patients who can use the gym, and to allow officers near the gym to respond to a "code 500" call.
- J-1-B-19 Revision of request for discharge procedure to require witnessing of patients "mark" or signature, notification of the Admissions Coordinator about the patient's interview, and delivering a copy to psychiatrist and program director.
- J-1 Section I "Snow Plan" is hereby deleted.

## KENTUCKY CORRECTIONAL PSYCHIATRIC CENTER POLICY MANUAL - J-11

- J-11/14 Medical Staff Policy & Procedure - a new policy in compliance with the Division of Licensing and Regulations, to define responsibilities of physicians.]

DENNIS D. BOYD, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 21, 1985, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985, of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Verna Fairchild

(1) Type and number of entities affected: This regulation with the attached reference material is the on-going policy and procedure manual of the state facilities for the treatment of patients with mental illness and mental retardation. These facilities function with 2,880 staff members serving 6,525 residents.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: This regulation usually does not affect the fiscal operation of these state facilities significantly. It affects the care and treatment of patients, compliance with JCAH standards, and Kentucky licensure regulations. The work environment of the staff is frequently the

subject of this regulation also, along with the orderly management of the various programs.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Present procedure not previously adopted by regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:

Was tiering applied? Yes

**CABINET FOR HUMAN RESOURCES  
Department for Health Services  
Certificate of Need and Licensure Board  
(Proposed Amendment)**

**902 KAR 20:132. Certificate of need expenditure minimums.**

RELATES TO: KRS 216B.010 to 216B.131, 216B.990(2)

PURSUANT TO: KRS 216B.040, 216B.130

NECESSITY AND FUNCTION: KRS 216B.040 authorizes the Certificate of Need and Licensure Board to promulgate administrative regulations. KRS 216B.130 requires the Certificate of Need and Licensure Board to annually adjust expenditure minimums provided in KRS Chapter 216B. This regulation provides for the adjustment of expenditure minimums for capital expenditures and operating costs for the period beginning July 15, 1985 [1984] and ending July 14, 1986 [1985].

Section 1. (1) Expenditure minimums or limits provided in KRS Chapter 216B and regulations promulgated pursuant thereto shall be adjusted for the twelve (12) month period beginning July 15, 1985 [1984] and ending July 14, 1986 [1985] to reflect the changes in the preceding twelve (12) month period in an index designated by Federal regulation pursuant to the Health Planning and Resources Development Amendments of 1979, P.L. 96-79, as amended.

(2) Federal regulations designated the Department of Commerce Composite Construction Cost Index to be used in making these adjustments (42 CFR 123.401).

(a) Notice published in the Federal Register on April 11, 1983, indicated that on October 1, 1981 the index was fixed at 154.9 and that on October 1, 1982, the index was fixed at 155.8, an increase of nine-tenths (0.9) points or six-tenths (0.6) percent. Accordingly, the expenditure minimums provided for in the 1982 amendments to KRS Chapter 216B were increased six-tenths (0.6) percent through this regulation

for the twelve (12) month period from July 15, 1983, to July 15, 1984.

(b) Notice published in the Federal Register on May 3, 1984, indicated that on October 1, 1983, the index was fixed at 158.8. The three and nine-tenths (3.9) point change in the index from October 1, 1981, to October 1, 1983, represents a two and five-tenths (2.5) percent increase. Accordingly, the expenditure minimums provided for in the 1982 amendments to KRS Chapter 216B were increased two and five-tenths (2.5) percent through this regulation for the twelve (12) month period from July 15, 1984, to July 15, 1985.

(c) Notice published in the Federal Register on April 9, 1985, indicated that on October 1, 1984, the index was fixed at 163.7. The eight and eight-tenths (8.8) point change in the index from October 1, 1981, to October 1, 1984, represents a five and seven-tenths (5.7) percent increase.

Section 2. The expenditure minimums provided in KRS Chapter 216B shall be increased for the twelve (12) month period from July 15, 1985 [1984] to July 14, 1986 [1985] as follows:

(1) The expenditure minimum of \$600,000 for capital expenditures shall be increased by five and seven-tenths (5.7) [two and five-tenths (2.5)] percent, to \$634,200 [\$615,000]; and

(2) The expenditure minimum of \$250,000 for operating costs shall be increased by five and seven-tenths (5.7) [two and five-tenths (2.5)] percent, to \$264,250 [\$256,250].

(3) The expenditure minimum of \$400,000 for major medical equipment shall be increased by five and seven-tenths (5.7) [two and five-tenths (2.5)] percent, to \$422,800 [\$410,000].

C. HERNANDEZ, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on June 21, 1985, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985, of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: A small number of potential applicants for certificates of need. Some applicants who would be required to apply for a certificate of need under the existing expenditure minimums may not need to apply since the expenditure minimums are being raised. The reduction in the number of applications submitted due to this change is expected to be negligible, if there is any reduction at all. The adjustment would be effective as of July 15, 1985.

(a) Direct and indirect costs or savings to those affected: Those affected would not incur the costs associated with preparing, filing and processing a certificate of need application.

1. First year:

2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
  - (b) Reporting and paperwork requirements: Some potential applicants may not have to file a certificate of need application.
  - (2) Effects on the promulgating administrative body:
    - (a) Direct and indirect costs or savings: There would be a slight savings if fewer CON applications are submitted.
    1. First year:
    2. Continuing costs or savings:
    3. Additional factors increasing or decreasing costs:
    - (b) Reporting and paperwork requirements: There would be less paperwork if fewer CON applications are submitted.
    - (3) Assessment of anticipated effect on state and local revenues: No significant impact. There would be no certificate of need application fee collected on the proposals affected. However, as stated above, the number of proposals affected is expected to be negligible, if any are affected at all.
    - (4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives. The annual adjustment is required by law, KRS 216B.130.
    - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
    - (a) Necessity of proposed regulation if in conflict:
    - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
    - (6) Any additional information or comments: None

Tiering:  
Was tiering applied? No. Not applicable.

**CABINET FOR HUMAN RESOURCES**  
Department for Social Insurance  
Division of Management & Development  
(Proposed Amendment)

**904 KAR 1:004. Resource and income standard of medically needy.**

RELATES TO: KRS 205.520  
PURSUANT TO: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

- (1) The upper limit for resources is \$1,600 for family size of one (1), \$3,200 for family size of two (2), and fifty (50) dollars for each

additional member.

- (2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of \$6,000 in income-producing, non-homestead real property, business or non-business, essential for self-support, is excluded from consideration. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or non-income producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of \$4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, or if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to \$1,500 [\$3,000] per individual, which may be in the form of burial agreement(s), (prepaid burials or similar arrangements, trust fund(s), life insurance policies, or other separate and identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to un-commingle the burial reserve amount.

(6) Burial spaces, plots, or vaults are excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(8) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

Section 2. Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 3. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$2,300	\$192
2	2,700	225
3	3,200	267
4	3,900	325
5	4,600	383
6	5,200	433

For each additional member, \$600 annually or fifty (50) dollars monthly is added to the scale.

Section 4. Additional Income Considerations. In comparing income with the scale as contained in Section 3 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 5 of this regulation:

(1) In cases of adults and children, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is seventy-five (75) dollars per month. All earnings of an in-school child are disregarded.

(2) In cases of adults and children, dependent care as a work expense is allowed not to exceed \$160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1) of this section) or \$110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

Section 5. Individuals in Chronic Care Institutions. For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance is twenty-five (25) dollars monthly in lieu of the

figure shown in Section 3 of this regulation. All income in excess of twenty-five (25) dollars is applied to the cost of care except as follows:

(a) Available income in excess of twenty-five (25) dollars is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3 of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party, including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

Section 6. Spend-Down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 of this regulation may qualify for any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room and/or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases which are solely responsible for ineligibility of the individual for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements.



Section 10. Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Stepparents are responsible for their stepchildren as shown in Section 10(7) and Section 11 of this regulation. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness.

(2) In cases of aged, blind, or disabled applicants or recipients living with their spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (4) of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income ceases in the month after the month of separation but resources are considered mutually available to each other the month of separation and the six (6) months following that month.

(4) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and as a single individual after the month of separation.

(5) For an individual whose case is being worked as if he/she were a single individual due to living apart from his/her spouse, as shown in Section 10(3) and (4) of this regulation, who has jointly held resources with his/her spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(6) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and/or resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or non-spouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(7) In cases of a blind or disabled child under eighteen (18) living with his/her parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(8) Income and resources of parent(s) are not considered available to a child living apart from the parents' for a period in excess of thirty (30) days, but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and/or income are considered in relation to family size of one (1).

(9) When a recipient in a family case has income and resources considered in relation to family size and enters a long term care facility, his/her income and resources are considered in the same manner as previously for up to one (1) year. For such an individual, the twenty-five (25) dollars maintenance standard is not applicable since his/her needs are considered with that of other family members. The eligibility of the individual, with regard to income and resources, must be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent and Effect on Eligibility of the Assistance Group. An incapacitated (as determined by the department) stepparent's income is considered in the same manner as for a parent if the stepparent is included in the family case. When the stepparent living in the home is not being included in the family case on the basis of incapacity, the stepparent's gross income is considered available to the parent (but not the other members of the assistance group) subject to the following exclusions/disregards:

(1) The first seventy-five (75) dollars of the gross earned income of the stepparent who is employed full time or the first forty (40) dollars of the gross earned income of the stepparent who is employed part time (with full-time and part-time employment as defined in Section 4(1) of this regulation).

(2) An amount equal to the medically needy income limitations scale as shown in Section 3 of this regulation for the appropriate family size, for the support of the stepparent and any other individuals living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability.

(3) Any amount actually paid by the stepparent

to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability.

(4) Payments by the stepparent for alimony or child support with respect to individuals not living in the household.

(5) Income of a stepparent receiving Supplemental Security Income.

(6) Verified medical expenses for the stepparent and his/her dependents in the home.

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself/herself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility must be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

Section 13. Treatment of Lump-Sum Income. Lump-sum income is considered available in the month of receipt or the first administratively feasible month thereafter.

Section 14. Transferred Resources. When an applicant or recipient transfers a nonexcluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.

(1) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is for some other reason or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value.

(2) After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in

ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if non-homestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for non-homestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(3) If retention would result in ineligibility, the cabinet will consider the excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:

(a) The value of the total excess resources considered available (including the uncompensated equity value of the transferred resource) shall be reduced by \$500 for each month that has elapsed since the transfer, beginning with the month of transfer; except

(b) The reduction provided for in paragraph (a) shall not be applicable with regard to any month in which the individual received medical assistance but was actually ineligible due to the provisions of this section.

(4) For those recipients who were receiving assistance on February 28, 1981, this section is applicable only with respect to resources transferred subsequent to that date.

(5) The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death of a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss.

(6) If the individual is in a long term care facility, the actual cost of long term care (rather than the \$500) may be deducted from the uncompensated value excess on a monthly basis.

Section 15. Special Provisions for AIS/MR Recipients. Effective April 1, 1983, medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

(1) The income and resources of the parent(s) and/or spouse shall not be considered available to the AIS/MR participant.

(2) Income protected for basic maintenance of the AIS/MR participant shall be the standard for the federal supplemental security income program.

(3) The attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar.

(4) Determinations of eligibility for medical assistance of the AIS/MR participant's parent(s), spouse, and/or dependent children

shall be made on the same basis as if the participant was institutionalized.

Section 16. Implementation. The provisions of this regulation, as amended, will be effective on July [January] 1, 1985, applicable at the time of the next determination of eligibility for each applicant or recipient.

JACK F. WADDELL, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on June 21, 1985, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985 of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West Frankfort, Kentucky 40621.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: 20 to 25 recipients

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$30,000 to \$35,000 (savings)

2. Continuing costs or savings: \$30,000 to \$35,000 (savings)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Not applicable to Medicaid regulations..

#### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management & Development (Proposed Amendment)

904 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet by regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance, hereinafter referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private non-profit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women, when the unborn child is deprived of parental support due to death, absence, incapacity or unemployment of the father;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment;

(7) Children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and

(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his/her first birthday, resides in the household of the woman, and the woman remains eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date of birth.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy. For individuals covered on January 1, 1985 pursuant to this section, the usual three (3) month rule on retroactivity (as shown in Section 3(15)) will apply.

Section 3. Technical Eligibility Requirements. Technical eligibility factors of families and

individuals included as categorically needy under subsections (1) through (6) of Section 1, or as medically needy under Section 2 are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty dollars (\$50) during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii);

(f) The unemployed parent must meet the requirements for independent employment search as specified herein. That is:

1. The unemployed parent must make not less than twenty-four (24) contacts with prospective employers in each three (3) month period following an approval, reinvestigation or reapproval.

2. The unemployed parent may not contact the same prospective employer more than once in each calendar month.

3. If the unemployed parent does not meet the requirement for the minimum number of employment contacts during the three (3) month period, the parent may, prior to or upon receipt of the advance notice of proposed discontinuance, meet the requirement for the number of contacts for the prior three (3) month period. These contacts shall not offset the requirement for employer contacts during the three (3) month period following the next approval, reinvestigation or reapproval.

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such

involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Families losing AFDC eligibility solely due to loss of the thirty (30) dollars disregard or the one-third (1/3) disregard from earnings shall be deemed AFDC eligible for nine (9) months after the termination of the disregard, and shall as a result be eligible for continued medical assistance for the nine (9) month period. To qualify for continuing eligibility in this situation, the family must have received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The nine (9) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the nine (9) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members who were included in the grant (and children born during the nine (9) month period).

(10) Families losing AFDC eligibility as a result (wholly or partly) of the collection or increased collection of child or spousal support, and who received AFDC in at least three (3) of the six (6) months immediately preceding the month in which such ineligibility begins, shall be deemed AFDC eligible for Title XIX purposes for four (4) months beginning with the month in which ineligibility begins. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

Coverage for medical assistance is extended to all family members losing eligibility as a result of the receipt of the child or spousal support. The extended eligibility provision contained herein is applicable only with respect to families discontinued on or after July 18, 1984 and before October 1, 1988.

(11) Parents may be included for assistance in the cases of families with children including natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(12) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(13) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member.

(14) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403, which are hereby incorporated by reference.

(15) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(16) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement

specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(17) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 4. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a non-medical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a state institution for mental illness unless he is under age eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19)) or is sixty-five (65) years of age or over.

Section 5. Emergency Shelters. Effective July 1, 1985, an individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions are as follows:

(1) The individual (or family group) must be a resident of an emergency shelter no more than three (3) months in any twelve (12) month period.

(2) The individual (or family group) must not be in the facility serving a sentence imposed by the court, or awaiting trial.

(3) The individual (or family group) must be otherwise eligible when outside the emergency shelter; that is, eligibility must have existed immediately prior to admittance to the shelter, or it must exist immediately after leaving the shelter.

Section 6. [5.] Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the

federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 7. [6.] Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 8. Provision of Social Security Numbers. Beginning May 1, 1985, each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. For recipients, the requirement shall be effective with the first full reinvestigation occurring on or after May 1, 1985.

[Section 7. Date of Implementation. The provisions of this regulation, as amended, shall be effective on January 1, 1985.]

JACK F. WADDELL, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All applicants/recipients of AFDC-related medical assistance only; all state supplementation applicants/recipients; all adult related applicants/recipients of medical assistance only.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$5,000 to \$10,000 (savings)\*

2. Continuing costs or savings: \$5,000 to \$10,000 (savings)\*

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: \*Assumes covering individuals/families in emergency shelters will cost \$5,000 to \$10,000 per year, but that social security enumeration will result in a net savings of \$10,000 to \$20,000 per year for a total net savings of \$5,000 to \$10,000.

Tiering:

Was tiering applied? No. Not applicable to Medicaid regulations.

#### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development (Proposed Amendment)

904 KAR 1:014. Outpatient hospital services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet [Department] for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520[(3)] empowers the cabinet [department], by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to outpatient hospital services for which payment will be made by the medical assistance program in behalf of both the categorically needy and medically needy.

Section 1. Hospital Outpatient Services Covered by the Medical Assistance Program. There are no limitations on the number of hospital outpatient visits or services available to program recipients.

(1) Hospital outpatient services to be covered, as listed below, must be prescribed by, or in the case of emergency room services, determined to be medically necessary by a duly-licensed physician, or when applicable, a duly-licensed dentist, for the care and treatment indicated in the management of illness, injury, impairment or maternity care, or for the purpose of determining the existence of such an illness or condition in a patient. Moreover the services must be furnished by or under the supervision of a duly-licensed physician, or when applicable, a duly-licensed dentist.

(a) [(1)] Diagnostic services as ordered by a physician.

(b) [(2)] Therapeutic services as ordered by a physician.

(c) [(3)] Emergency room services in emergency

situations as determined by a physician.

(2) Hospital outpatient services for maternity care may be provided by an advanced registered nurse practitioner (ARNP) who has been designated by the Kentucky Board of Nursing as a nurse midwife or by a registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Human Resources.

Section 2. Hospital Outpatient Services Not Covered by the Medical Assistance Program. (1) Items and services which are not reasonable and necessary for or related to the diagnosis or treatment of illness or injury, impairment or maternity care.

(2) Services for which the individual has no obligation to pay and for which no other person has a legal obligation to provide or to pay.

(3) Medical supplies and appliances except those incident to the performance of services in the hospital outpatient department and which are included in the rate of payment established by the Kentucky Medical Assistance Program for hospital outpatient services.

(4) Drugs, biologicals and injectables purchased by or dispensed to a patient.

(5) Routine physical examinations.

JACK F. WADDELL, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: 50 to 100 recipients; about 5 participating nurse-wives; two participating hospitals.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$35,000 to \$70,000 (savings)\*

2. Continuing costs or savings: \$35,000 to \$70,000 (savings)\*

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: \*Assumes \$450 for a nurse midwife delivery in a hospital outpatient setting as compared to about \$1,175 for a physician delivery in-hospital with a 3-day admission.

Tiering:

Was tiering applied? No. Not applicable to Medicaid regulations.

#### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development (Proposed Amendment)

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2),(3)

PURSUANT TO: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children, hereinafter referred to as AFDC, in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Residence and Citizenship. Residence is determined in accordance with 45 CFR 233.40 which, in summary, provides that a resident is anyone who is living in the state, entered the state with a job commitment or seeking employment, and is not receiving AFDC benefits from another state. Citizenship is determined in accordance with 45 CFR 233.50 which states that AFDC can be provided only to citizens or aliens lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

Section 2. Deprivation. (1) To be eligible for AFDC, a child must be in need and must be deprived of parental support or care due to the death, continued absence from the home or physical or mental incapacity of a natural or adoptive parent. A married child living with her/his spouse in the home of her/his parents is not deprived of parental support or care. A married child living in the home of her/his parents but divorced or legally separated from her/his spouse is deprived of parental support if she/he is dependent on the parent and a parent is dead, incapacitated or continually absent from the home.

(2) Continued absence from the home. To be eligible for AFDC, a needy child must be physically separated from the parent and the nature of the absence of the parent is such as



either to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of absence precludes counting on the parent's performance of his/her function in planning for the present support or care of the child. Absence may be voluntary or involuntary. Voluntary absence includes divorce, legal separation, marriage annulment, desertion of thirty (30) days or more, forced separation of seven (7) days or more, or birth out-of-wedlock. Involuntary absence includes commitment to a penal institution for thirty (30) days or more, long term hospitalization, deportation or single parent adoption. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(3) Incapacity defined. Incapacity is any condition of mind or body which makes a parent physically or mentally unable to provide the necessities of life for his/her needy child. Incapacity exists when the following criteria are met:

(a) One (1) of the parents has a medically established physical or mental defect, illness or impairment.

(b) This condition substantially reduces or eliminates the parent's ability to support or care for the otherwise eligible child(ren). Ability to support and care requires consideration of the parent's age, education, training and work experience.

(c) This condition was present at the time of application and has continued or is expected to continue for at least thirty (30) days and may be presumed to continue during a period in which the parent is undergoing planned diagnostic studies and/or evaluation of rehabilitation potential.

(d) There is a causal relationship between the parent's incapacity and the child's deprivation of parental support or care.

(e) In considering a parent's ability to provide support or care, employment opportunities must be accessible in the county or community where that parent resides. [The condition must be anticipated to continue for at least thirty (30) days beyond the date of application and may be presumed to continue during a period in which the parent is undergoing diagnostic studies and/or evaluation of rehabilitation potential. Incapacity of the parent must prevent him/her from working in an occupation in which he/she previously engaged, or another job for which he/she is equipped and which is accessible in the county or community where he/she normally resides. If a job opportunity exists in the community or county, it shall be considered accessible regardless of its immediate availability. Scarcity of work does not establish incapacity unless there is a causal relationship between the parent's unemployment and actual physical or mental disability. Lack of paid work experience does not preclude the parent from being considered incapacitated.]

Section 3. Living with a Specified Relative. To be eligible for AFDC a needy child must be living in the home of a relative as specified in

the Social Security Act and interpreted as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.

(3) Any person listed above if parent has acknowledged paternity in a written affidavit.

(4) [(3)] Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(5) [(4)] Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.

(6) [(5)] A child is considered as living in the home even when temporarily absent for medical care, attendance at boarding school, college or vocational school, emergency foster care or short visits with friends or relatives, if the parent continues to exercise control over the child.

Section 4. Age and School Attendance. A child may be eligible for AFDC from birth to age eighteen (18), or to age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program prior to or during the month of their nineteenth birthday. Full and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC. A child is considered in regular attendance in months in which he/she is not attending because of official school or training program vacation, illness, convalescence or family emergency unless he/she has indicated an intention not to re-enter school.

Section 5. One Category of Assistance. A child or adult relative shall not be eligible for AFDC if receiving supplemental security income.

Section 6. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.

(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 7. Work Registration. (1) Unless exempt under the criteria specified in Title IV of the Social Security Act and 45 CFR Section 224.20(b), an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he/she refuses to register for the Work Incentive Program, (WIN) or if registered, refuses to participate without good cause. Participation in a strike shall not constitute good cause.

(2) Individuals exempt from WIN registration pursuant to 45 CFR 224.20(b) are as follows:

- (a) An individual under age sixteen (16);
- (b) A child age sixteen (16) to age eighteen (18), if enrolled as a full-time student; or to age nineteen (19), if a full-time student who meets the requirements set forth in Section 4 of this regulation;
- (c) An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days;
- (d) An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days;
- (e) An individual age sixty-five (65) or over;
- (f) An individual whose presence is required in the home to care for another member of the household who has been medically determined to be precluded from self-care and for whom alternate care arrangements are not feasible;
- (g) A parent or other relative who cares for a child under six (6), and who personally provides full-time care of the child with only very brief and infrequent absences from the child;
- (h) A person so far remote from a work incentive project that his/her effective participation is precluded;
- (i) An individual who is employed not less than thirty (30) hours per week, in unsubsidized employment expected to last a minimum of thirty (30) days, except when there is a temporary break in such employment expected to last longer than ten (10) days;
- (j) A woman who has been medically verified to be in the third trimester of pregnancy.

Section 8. Cooperation in Child Support Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his/her cooperation in child support activities pursuant to 45 CFR 232.12 and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child(ren) made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he/she is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) Pursuant to 45 CFR Part 232.40, the Cabinet for Human Resources will provide written notice to the applicant or recipient that he/she may claim good cause for refusing to cooperate.

(4) The applicant or recipient will be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

- (a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or
- (b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself/herself to such an extent that it would reduce his/her capacity to care for the child(ren) adequately; or
- (c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or

(e) The applicant/recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him/her for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's/recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43.

Section 9. Potential Entitlement for Other Programs. All applicants/recipients must apply for any statutory benefit(s) if potential entitlement exists. Failure to apply results in ineligibility for AFDC.

Section 10. Furnishing of Social Security Account Numbers. All applicants/recipients must furnish social security account numbers pursuant to 45 CFR 232.10.

Section 11. Assignment of Rights to Support. Pursuant to KRS 205.720, by accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 12. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 13. Provisions of this regulation shall be effective May 15, 1985 [October 1, 1984].

JACK F. WADDELL, Commissioner  
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 13, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: The expanded eligibility requirements will qualify an unknown number of applicants.

(a) Direct and indirect costs or savings to those affected: Unknown

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This provision is being amended to revise the definition regarding the determination of incapacity.

Tiering:

Was tiering applied? No. Not applicable to this program.

**CABINET FOR HUMAN RESOURCES**  
**Department for Social Insurance**  
**Division of Management and Development**  
**(Proposed Amendment)**

**904 KAR 2:116. Low income home energy assistance program.**

RELATES TO: KRS 194.050

PURSUANT TO: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility and benefits criteria for each of three (3) [two (2)] components of energy assistance, subsidy, [and] hardship, and emergency heating assistance under the Home Energy Assistance Program (HEAP).

Section 1. Application. Each household or authorized representative of the household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and benefit amount in accordance with the procedural requirements prescribed by the cabinet. An "authorized representative" is that person applying on behalf of a household who presents to the

cabinet a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. Definitions. Terms used in HEAP are defined as follows:

(1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" is defined to include electricity, gas, and any other fuel such as coal, wood, oil, bottled gas, etc., that is used to sustain reasonable living conditions.

(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(4) "Economic unit" is one (1) or more persons sharing common living arrangements.

(5) "Subsidy component" is that portion of benefits reserved as energy assistance for heating.

(6) "Hardship component" is that portion of benefits reserved for energy crisis assistance after the subsidy component is terminated. The hardship component is for eligible households who are without heat.

(7) "Emergency heating assistance component" is that component administered by local organizations under contract with the cabinet to provide fuel, heaters, blankets and/or sleeping bags, or vouchers to purchase these items to eligible households who are without heat or would be without heat before a fuel supply could be delivered.

Section 3. Eligibility Criteria. (1) A household must meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy, [and] hardship, and emergency heating assistance components:

(a) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered. Income received on an irregular basis will be prorated.

(b) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and JTPA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

# ADMINISTRATIVE REGISTER - 1946

## Income Scale

Family Size	Monthly	Yearly
1	\$415	\$ 4,980
2	560	6,720
3	705	8,460
4 or more	850	10,200

(c) If federal law prohibits setting income eligibility limits below 100 percent of poverty, then for each household member more than four (4), the above income eligibility limitation for four (4) or more will be increased by \$145 monthly or \$1,740 yearly for each additional household member.

(d) The household must have total liquid assets at the time of application of not more than \$5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, prepaid burial policies, real property, and cash on hand or in a bank account if said cash is income considered under paragraph (a) of this subsection.

(e) Applicants for the hardship component must attest that an immediate need for energy exists because the household is without heat.

(f) Applicants for the emergency heating assistance component must be without heat or would be without heat before a fuel supply can be delivered.

(2) Households are eligible to receive benefits under [both] the subsidy, [and] hardship, and the emergency heating assistance components.

Section 4. Benefit Levels. Payment amounts for the subsidy and hardship components are set at a level to serve a maximum number of households while providing a reasonably adequate payment relative to energy costs. The highest level of assistance will be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payments to eligible households will be made for the full benefit amount based on program component, type of energy for heating, monthly household income, and household size as specified in the following benefit scales.

## Benefit Scales Subsidy Component

### Scale A.

Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Kerosene

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
\$ 0 - 400	\$138	\$150
\$401 - 800	\$120	\$132
over \$800	---	\$113

### Scale B.

Energy Sources: Natural Gas, Coal, Wood

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
\$ 0 - 400	\$125	\$137
\$401 - 800	\$107	\$119
over \$800	---	\$100

## Hardship Component

### Scale A.

Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Kerosene

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
\$ 0 - 400	\$276	\$300
\$401 - 800	\$239	\$263
over \$800	---	\$226

### Scale B.

Energy Sources: Natural Gas, Coal, Wood

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
\$ 0 - 400	\$250	\$274
\$401 - 800	\$213	\$237
over \$800	---	\$200

(2) If the cabinet receives only a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy or hardship components may be reduced proportionately.

(3) Benefits to eligible households under the emergency heating assistance component shall be in the form of fuel, heaters, blankets, and/or sleeping bags, or vouchers to purchase these items not to exceed \$150 total benefit value per eligible household, unless the minimum amount of fuel that a vendor will supply exceeds that value, in which case the amount necessary to obtain delivery may be provided as benefit not to exceed \$300 per eligible household.

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as follows:

(1) Whenever feasible, payment under the subsidy component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.

(2) Payment under the hardship component is authorized by a one (1) party check made payable to the energy provider (landlord) only, unless the provider refuses to accept the payment on behalf of the recipient and deliver or restore service, whereupon, the payment will be made to the recipient only. All payments will be mailed to the recipient.

(3) When a two (2) party check is not issued under the subsidy or hardship components, the recipient shall sign a statement as part of the application prior to receipt of funds affirming that benefits received under HEAP shall be

utilized solely for home energy.

(4) Under the subsidy and hardship components, at the recipient's discretion, the total benefit may be made in separate authorizations to facilitate payment to more than one (1) provider (e.g., when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments may not exceed the maximum for the primary source of energy for heating under the appropriate component. The household will decide how to divide payment if more than one (1) provider is used.

(5) For the emergency heating assistance component, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 7. Time Standards. The cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP:

(1) Applications for the subsidy component shall be accepted as follows:

(a) Households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits on the basis of 100 percent disability may apply beginning October 15, 1984 and ending no later than October 26, 1984.

(b) Applications shall be accepted from all households beginning November 12, 1984 and ending no later than December 31, 1984.

(2) Applications for the hardship component shall be accepted beginning January 7, 1985 and ending no later than May 31, 1985.

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy and hardship components shall be terminated by the secretary when actual and projected component expenditures have resulted in utilization of available funds or May 31, 1985, whichever comes first.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose.

(5) The emergency heating assistance component may be implemented by the contracting agency on February 1, 1985. Benefits shall be provided until funds are exhausted or May 31, 1985, whichever comes first.

Section 9. Allocation of Funds. (1) Up to thirteen (13) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Up to two (2) percent or a minimum of \$500,000 shall be reserved for the Gas Furnace Retrofit Pilot Project.

(3) Up to \$4,000,000 shall be reserved for the hardship component. Fifty (50) percent of the funds reserved [available] under the hardship component shall be available [reserved] for households whose primary source of energy for heating is electricity or natural gas and fifty

(50) percent shall be available [reserved] for all other sources of energy. Any funds remaining available from the subsidy component shall be made available under the hardship component.

(4) Remaining benefit funds available under Public Law 97-35 shall be reserved for the subsidy component. Fifty (50) percent of the funds available under the subsidy component shall be reserved for households eligible to apply beginning October 15, 1984 and ending no later than October 26, 1984. The remaining fifty (50) percent plus any funds remaining available after October 26, 1984 shall be reserved for households applying beginning November 12, 1984 and ending no later than December 31, 1984. Any funds remaining available under the subsidy component after December 31, 1984 shall be made available under the hardship component.

(5) Up to \$500,000 shall be reserved for administration and implementation of the emergency heating assistance component.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated differently than households not receiving benefits; [and]

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

JACK F. WADDELL, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 21, 1985 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: Approximately 5,000 low income households under the emergency heating assistance component.

(a) Direct and indirect costs or savings to those affected: \$450,000 benefit funds under the emergency heating assistance component.

1. First year: Approximately 5,000 households

will receive benefits with an average value of \$96 per household.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: All households must apply for benefits under this program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment reduces the ten percent LIHEAP block grant funds reserved for administrative costs by \$500,000.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Administrative requirements for grants under appropriate state and federal law and regulation.

(3) Assessment of anticipated effect on state and local revenues: All benefits apply to energy

costs of low income households.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A; program governed by federal law and regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The Low Income Home Energy Assistance Program is 100 percent federally funded and the amendments to this regulation are promulgated in accordance with the LIHEAP block grant requirements.

Tiering:

Was tiering applied? No. Not applicable to Low Income Home Energy Assistance Program regulations.

## PROPOSED REGULATIONS RECEIVED THROUGH MAY 15

### GENERAL GOVERNMENT CABINET Board of Barbering

201 KAR 14:170. Reinstatement in case of revocation of license.

RELATES TO: KRS 317.420, 317.450, 317.590

PURSUANT TO: KRS 317.440

NECESSITY AND FUNCTION: This regulation sets out the procedures for a person whose license is revoked by the board to apply for reinstatement.

Section 1. Any licensee whose license has been revoked may apply for reinstatement after a period of fifteen (15) days. The application shall be on a form provided by the board and shall be accompanied by a fee of twenty (20) dollars. The original record in the revocation proceedings shall become a part of the record in considering the application for reinstatement. The board shall determine that the grounds for revocation have abated and that the applicant satisfies the requirements of KRS Chapter 317 prior to issuing a license, including retaking and satisfactorily passing any examination required by the board.

Section 2. When an application for reinstatement is denied, no application for reinstatement may be filed for ninety (90) days from the date of the order denying reinstatement.

NOEL EUGENE RECORD, Administrator

APPROVED BY AGENCY: April 24, 1985

FILED WITH LRC: April 24, 1985 at 1 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 25, 1985 at 10 a.m. at the offices of the Board of Barbering, 400 Sherburn Lane, Suite 405, Louisville, Kentucky 40207. However, this hearing will be cancelled unless interested persons notify in writing this office five (5) days prior to the above hearing date. The person

to contact would be: Gene Record, Administrator, 400 Sherburn Lane, Suite 405, Louisville, Kentucky 40207.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gene Record, Administrator,

(1) Type and number of entities affected: Anyone who has had their license revoked (8 in 1984-85)

(a) Direct and indirect costs or savings to those affected:

1. First year: \$20.00

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: May be required to be re-examined.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Each revoked license would bring in \$20.00 (8 in 1984-85)

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Non-applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

**Tiering:**

Was tiering applied? Yes. Some applicants may be required to be examined, depending on reasons for revocation.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division of Water**

**401 KAR 6:300. Water well drillers certification; examination; fees.**

RELATES TO: KRS 223.400 through 223.460, 223.991

PURSUANT TO: KRS 223.420

**NECESSITY AND FUNCTION:** This regulation contains provisions for the general practice of water well drilling, including application requirements, conduct of examinations and a schedule of fees. The schedule of fees included herein will partially reimburse the cabinet's expenses for this program and implementation of this fee schedule is required by law.

**Section 1. Examinations.** (1) The water well drillers certification examination shall consist of two (2) parts. The first part shall be the National Water Well Drillers standardized examination. All examinees shall take both the general examination and the speciality examination in their area of practice. This part shall constitute seventy (70) percent of the total value of the examination. The second portion of the examination shall consist of questions relating to applicable laws and regulations and other issues as the cabinet deems necessary.

(2) A passing grade for the examination shall be seventy (70) percent correct answers on the composite examination. Any person who does not obtain a passing grade on the total examination, but scores higher than seventy (70) percent on the first part of the examination, need only take the second portion as defined in subsection (1) of this section and score at least seventy (70) percent thereon for certification.

(3) The examination will be offered only to those persons who have verified to the cabinet that they have two (2) years of water well drilling experience under a certified water well driller.

(4) The cabinet will schedule water well drillers examinations at least twice a year.

(5) Drillers who have passed all applicable portions of the National Water Well Drillers examination previously or who have passed this examination when administered by someone other than the cabinet shall be required to take only the second portion of the examination as defined in subsection (1) of this section. A seventy (70) percent score shall be required for passing.

**Section 2. Fees.** (1) A non-refundable fee of twenty-five (25) dollars shall be submitted with each application.

(2) The cabinet will require an advance payment of twenty-five (25) dollars for each examination administered.

(3) An applicant, upon notification that all requirements have been met for certification, shall remit a certification fee of \$100 for initial certification.

(4) The fee for certificate renewal shall be \$100 per year.

(5) All fees shall be in the form of a check or money order payable to the Kentucky State Treasurer.

**Section 3. Issuance, Expiration, and Reinstatement of Certificates.** (1) All certificates will be valid from the date of issuance until the next June 30th. Renewed certificates will bear as their date of issue July 1 of the appropriate year. Newly issued certificates will bear as date of issuance the date that all certification requirements are deemed fulfilled.

(2) Any certificate for which the renewal fee is not paid within ninety (90) days of the beginning of the certification year, which shall be July 1, shall be considered expired. Such expired certificates may be reinstated without examination within two (2) years of the beginning of the certification year in which they expire by the driller's paying the current year's renewal fee. After two (2) years the certificate is invalid and the driller shall be required to meet all requirements for certification established in this regulation.

**Section 4. Wallet Cards.** The cabinet will provide upon certificate issuance and again upon each annual renewal a card of suitable size to be carried in a wallet and bearing at least the name and certificate number of the driller and indicating the period for which the card is issued. This wallet card shall be carried by the driller at all times while on a job site.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at noon

**PUBLIC HEARING SCHEDULED:** A public hearing on this proposed regulation will be held on June 21, 1985 at 10 a.m. in the Auditorium of the Capital Plaza Tower in Frankfort. A person interested in attending this hearing shall submit by June 16, 1985, a written request to: A. Leon Smothers, Assistant Director, Division of Water, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601. Written comments will be accepted for the record until 4:30 p.m. on June 20, 1985.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: A. Leon Smothers

(1) Type and number of entities affected: These regulatory changes will affect about 200 water well drillers doing business in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation establishes fees totaling \$150 for certifying water well drillers through the normal process; \$125 for those which are grandfathered into certification.

2. Continuing costs or savings: The renewal fee rate will be \$100 per year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There will be no additional costs beyond those presented above. There will be no effect upon competition.

(b) Reporting and paperwork requirements: There is an application form which must be completed by each driller seeking certification.



(2) Effects on the promulgating administrative body: This regulation is part of the process for implementing the water well drillers legislation passed as HB 263 in the 1984 General Assembly.

(a) Direct and indirect costs or savings:

1. First year: The Division will spend approximately \$100,000 to administer all aspects of this program in the first year. Approximately \$20,000 of this will be recovered through operators' certification fees provided for in these regulations.

2. Continuing costs or savings: Same as (2)(a)1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will be evaluating and filing applications for certification, issuing certifications, collecting and accounting for certification fees, receiving and cataloging well reports (required by law), and keeping other records as required to administer the program.

(3) Assessment of anticipated effect on state and local revenues: These regulations will provide funds which will help offset state expenditures on the program, but should have no effect on local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternatives considered were to charge no fees and to charge fees at a different rate. Some fee is reasonable as a legitimate cost of doing business and as authorized by statute. The rate set was based on consideration of fees charged in surrounding states and what was felt to be reasonable. The fee provides much less revenue than required to administer the program.

The remaining provisions (i.e., other than those related to fees) have been based on standard practices in other programs. Other alternatives were considered for each of these provisions and rejected.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Not applicable; there is no inherent classification system for drillers by which a tiering system could be instituted.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department of Environmental Protection  
Division of Water

401 KAR 6:310. Water well construction practices and standards.

RELATES TO: KRS 223.400 through 223.460, 223.991

PURSUANT TO: KRS 223.420, 223.435

NECESSITY AND FUNCTION: This regulation

provides standards and requirements for the commercial practice of water well drilling. These requirements are necessary to ensure that the complete well provides an appropriate quality of product to the consumer while protecting the ground water resources of the Commonwealth. This regulation furthermore fulfills a requirement of law.

Section 1. Definitions. (1) "Annular space" means the opening between a well-bore or excavation and the well casing or between a casing pipe and a liner pipe.

(2) "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.

(3) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

(4) "Consolidated formation" means a geological formation which is firm, such as rock.

(5) "Construction" means all acts necessary for obtaining ground water by wells, including drilling or excavation of the well, but excluding the installation of permanent pumps and pumping equipment.

(6) "Driller" means water well driller as defined in KRS 223.400.

(7) "Established ground surface" means the elevation of the ground surface at the site of the well.

(8) "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well.

(9) "Modification" means any change, replacement, or other alteration of the water well. This includes, but is not limited to deepening of a well, replacing or repairing a casing, repair or replacement of well screen, installation of a pitless adapter and any other changes of a well structure.

(10) "Pumping water level" means the elevation of the water surface in a well when water is discharged during pumping.

(11) "Static water level" means the level of which water stands in a well when no water is being taken from the aquifer either by pumping or by free flow.

(12) "Unconsolidated formation" means a geological formation above bedrock, such as sand or gravel, which has a tendency to cave in under natural conditions.

Section 2. Scope. This regulation provides minimum standards for location, construction and modification of water wells as defined in Kentucky Revised Statutes, Chapter 223. After the effective date of this regulation, no water well as defined above shall be constructed or modified contrary to the provisions contained herein.

Section 3. General Requirements. (1) Certified driller required. All water wells subject to this regulation shall be constructed only by persons having a valid certificate under Kentucky Revised Statutes, Chapter 223, Sections 223.400 through 223.460 or by persons in the employ of such certificate holders.

(2) Reports. Within thirty (30) days after a water well has been constructed or modified, the driller shall submit a report of construction to the cabinet on such forms as are prescribed and furnished by the cabinet.

(3) Variance.

(a) If conditions are believed to exist of a proposed installation site which preclude compliance with the requirements of this regulation, the driller may request a variance by submitting to the cabinet a written request outlining a specific proposal to be used in lieu of compliance with this regulation. The request shall include a thorough description of the site (lot size, the location of sewers, septic tanks, buildings, seepage fields, and other sources of contamination on the property and adjacent property with distances shown to the proposed well), the section number and brief summary of the provisions for which a variance is requested, and a complete justification as to why the cabinet should approve the variance. Special emphasis should be given to ensuring the protection of the public's health and safety. A description of geological and soil conditions shall also be included. The cabinet will notify the applicant in writing of its decision either to grant or deny the variance. A variance shall be requested and approved before well construction begins. In case of an emergency, where the delay incurred due to the above-described variance procedure would cause undue hardship or loss of life to the intended user, the driller may obtain an oral variance, provided the above-listed information is provided to the cabinet within fifteen (15) days of the date such oral variance is issued.

(b) After any variance is issued regarding the location of a well with respect to various contamination sources in Section 6 of this regulation, the driller for which a variance has been issued, the driller shall take two (2) water samples from the well and have them analyzed for fecal coliform at a cabinet-approved laboratory. (A listing of these laboratories is available on request.) The cabinet may require analysis for other parameters if necessary to protect the health or safety of potential users. One (1) sample shall be taken within thirty (30) days and the second sample shall be taken within sixty (60) days, but not less than thirty (30) days, after completion of the well.

(c) Examples of location problems which could preclude compliance with this regulation would be the proposed location of a well too close to septic tanks, buildings, sewer lines, or barnyards.

(d) Examples of public health and engineering principles that will be considered in issuing a variance are ground surface conditions, depth of the water table, the location of sources of contamination, the ability of the existing soil to remove bacteria, and the geologic conditions at the site.

(4) Water sampling. All samples pursuant to KRS 223.400 et seq. or this regulation shall be delivered to the laboratory within six (6) hours of the time they are taken and shall be kept at four (4) degrees centigrade (or forty (40) degrees Fahrenheit) during that time, but shall not be frozen. Containers for the samples shall be sterile glass or plastic. However, drillers may obtain approval from the cabinet to perform fecal coliform analyses (except those required for variance approval) provided they can demonstrate to the cabinet that they are capable of providing an accurate analysis. The cabinet will approve the variance if the proposal is in accord with accepted public health and sanitary

engineering principles and practices, and if the resulting water well pump installation can be expected to provide a continuously safe and sanitary water supply.

(5) Display of certificate number. Drillers shall have their certificate numbers permanently affixed and prominently displayed on all equipment used at construction sites. Numbers shall be at least three (3) inches in height and of a color that is easily distinguishable from that of the equipment. This number shall be removed if equipment is scrapped, sold, or otherwise changes ownership or if the driller's certificate becomes invalid.

Section 4. Design Factors. The design of each well shall include the following:

(1) Natural protection. Location of the well shall include use of every natural protection available to promote sanitary conditions.

(2) Geological formations. The well construction shall be adapted to the geologic formations and ground water conditions at the site.

(3) Undesirable geological formations. Water bearing formations shall be excluded by installing casing or a liner and properly sealing when such formations contain undesirable water or when the primary purpose for the well is to withdraw water from a deeper formation.

(4) Capacity. Capability of the well to produce as much of the desired water quantity as the aquifer or aquifers can safely furnish.

(5) Durability. Construction methods and materials shall provide a durable well capable of maintaining safe water and protecting the aquifer.

(6) Pitless well adapters. No well casing shall be cut off or cut into below ground surface except by a driller to install a pitless well adapter. Pitless well adapters shall comply with the requirements of the National Sanitation Foundation (NSF) Standard Number C-8, entitled Pitless Well Adapters, May 1970 edition and shall bear the NSF seal.

Section 5. Location. (1) General. In establishing the location of a well, the driller shall give the consideration to sources of contamination which exist on or adjacent to the premises where the well is to be located. As far as possible, the well shall be located on ground which is higher than sources of contamination and shall have ready access for repairs, maintenance, treatment and inspection.

(2) Relation to sources of contamination. Determination of minimum lateral distances to locate a well from potential sources of contamination involves evaluation of the character and location of the sources of contamination, types of geologic formations present, depth to the aquifer, direction of ground water flow, effect on the ground water movement by well pumping and possibilities of flooding of the site by surface waters. Sources of contamination such as streams, refuse disposal sites, excavations, waste treatment facilities, buried oil and gasoline storage tanks, improperly constructed wells and cisterns shall be evaluated and a distance determined based on the pertinent facts.

(a) The minimum lateral distances shown in Table A shall apply for the sources of contamination listed therein.

(b) When the upper formations are more pervious than clay or loam, the lateral distances in Table A shall be increased (i.e. double the distance for highly pervious gravel formation).

(3) Flood water. Locations subject to flooding should be avoided. If no reasonable alternate site exists, wells may be constructed in flood zones provided special protective construction is included. The casing of the well should terminate not less than two (2) feet above the maximum known flood elevation. In all instances, the casing shall terminate sufficiently above grade or above any known conditions of flooding by drainage or runoff from surrounding land.

(4) Relation to building. With respect to buildings, pits, and basements, the location of a well shall be as follows:

(a) Adjacent to building. When a well must be located adjacent to a building, it shall be so located that the center line of the well extended vertically will clear any projection from the building by not less than two (2) feet.

(b) Pits and basements. New wells shall not be constructed in pits or basements.

Section 6. Drilled Wells in Unconsolidated Formations. (1) General. Unconsolidated formations such as sand and gravel may extend to or near the ground surface. Generally, however, they lie below the ground surface at varying depths and are covered by an overburden of earth. The kind, nature and depth of the overburden are factors in determining how a well shall be constructed.

(2) Unconsolidated formations with non-stable overburden. Wells constructed in unconsolidated formations which extend the full depth of the well shall have a permanent casing installed governed by the pumping level in the finished well. For pumping levels greater than twenty (20) feet below the ground surface, the casing shall extend five (5) feet below the pumping level. For pumping levels twenty (20) feet or less below the ground surface, the casing shall extend ten (10) feet below the pumping level. Under no conditions shall there be less than twenty (20) feet of permanent casing installed. (See Illustration A.)

(3) Unconsolidated formations with stable overburden. Wells constructed in geological formations such as sand and gravel which lie below clay, glacial till or other relatively stable soil shall have a casing installed governed by the pumping level. For pumping levels greater than twenty (20) feet, the casing shall extend five (5) feet below the pumping level. For pumping levels twenty (20) feet or less, the casing shall extend ten (10) feet below the pumping level. Under no conditions shall there be less than twenty (20) feet of permanent casing installed. Since the stable overburden cannot be expected to form a continuous contact seal with the casing, sealing of the annular opening between the casing and the drill hole must be effected. This can be accomplished by constructing an upper drill hole having a diameter four (4) inches greater than the inner diameter of the casing to be installed and extending to a depth of at least twenty (20) feet. The upper drill hole shall be sealed with drill cuttings, clay slurry or cement grout after the casing is in place. (See Illustration B.)

(4) Gravel pack construction. When an over-sized drill hole (i.e., more than four (4) inches greater than nominal diameter) is constructed to permit the placement of a gravel pack around the well screen, the annular opening between the casing and drill hole shall be sealed in the top twenty (20) feet or twenty (20) feet below the point of pitless adapter attachment with concrete or neat cement grout or bentonite. If a permanent outer casing is installed, it shall extend to a depth of at least twenty (20) feet and, depending on the formations present, the annular opening between the drill hole and the outer casing shall be sealed with drill cuttings, clay slurry, bentonite, or cement grout. The annular opening between inner and outer casings shall be sealed to prevent contamination from the surface. (See Illustration C.)

(a) All gravel placed in the well shall be clean, washed and disinfected prior to placement or provisions made for disinfection in place.

(b) Gravel refill pipes may be installed if they terminate above ground surface and are provided with watertight caps.

(c) Wells designed for placement of an artificial gravel pack shall be provided with an adequate screen having openings sized on the basis of the grain size of the gravel. The well shall be developed to ensure free entry of water without sediment.

Section 7. Drilled Well Construction in Consolidated Formations. (1) Where the soil overburden is less than thirty (30) feet in thickness, the well casing shall extend to a depth of at least twenty (20) feet below ground level and at least ten (10) feet into firm rock. The diameter of the drill hole shall be a minimum of two (2) inches greater than the inner diameter of the casing. The annular space shall be sealed with cement grout, bentonite clay, cuttings, or mechanical packer.

(2) Where the soil overburden is greater than thirty (30) feet in thickness, the casing shall be fitted with a drive shoe, when driven, and shall be driven to a firm seat in the limestone or dolomite and the annular space around the casing through the soil overburden sealed with drill cuttings, clay slurry, bentonite or cement grout. (See Illustration E.) Plastic casing shall be installed as required in subsection (5) of this section.

(3) Where the well is drilled to obtain water from a lower formation the casing shall extend at least through any creviced formation encountered and be seated in firm rock. The diameter of the drill hole through the creviced formation shall be a minimum of two (2) inches greater than the inner diameter of the casing. The annular space shall be sealed with cement grout, bentonite clay, cuttings, or mechanical packer. Where an outer casing is left in place, the annular space between the casings shall be cement grouted or the annular opening around the outer casing shall be sealed with drill cuttings, clay slurry, bentonite, cement grout, or mechanical packer. In instances where voids are encountered at depth, an effective seal must be installed below the lowermost void. (See Illustration D.)

(4) Flowing artesian well. The casing shall be installed to eliminate flow in the annular space and the annular opening between drill hole and

casing sealed with cement grout, bentonite clay, cuttings, or mechanical packer.

(5) Plastic casing installations. When plastic well casing is installed, the drill hole shall be a minimum of two (2) inches greater than the inner diameter of the casing. The pipe spigot and socket shall be cleaned and treated with a cleaner-primer. Joints shall be solvent cemented with a quick-setting cement, or threaded and coupled. Other types of joints may be evaluated and approved by the cabinet. A coupling shall be cemented on the bottom of the casing to stabilize it in the hole or centralizers used. A steel nipple five (5) to ten (10) feet long may be used on the bottom of the casing in lieu of the coupling. In rock wells, the casing shall be set into the rock a minimum of three (3) feet to prevent leaking around the end of the casing. In areas where the water is obtained at the rock surface, the casing shall be set at or just above the rock. A formation packer shall be installed just above the bottom of the casing. The annular opening between the casing and wall of the drill hole shall be sealed with bentonite slurry or neat cement grout.

Section 8. Special Type Wells. (1) General. Wells in this classification are dug, bored, driven, and radial collector. The choice of any one (1) of these as opposed to a drilled well is largely dictated by the characteristics of the water-bearing formations or aquifers in the local areas.

(2) Bored or dug well - well not finished with buried slab. Bored or dug wells that are not finished as buried slab wells shall comply with the following (see Illustration F):

(a) Annular opening. The open space between the excavation and the installed casing shall be grouted with concrete. The concrete shall be a minimum of six (6) inches thick and be poured without construction joints from the ground surface to a minimum of ten (10) feet below ground level. The contractor shall be responsible for the installation of the concrete grout. The diameter of the well bore below the grouting shall be a minimum of four (4) inches greater than the outside diameter of the well casing and shall be filled with pea gravel to the well bottom.

(b) Upper terminal. The casing shall extend at least eight (8) inches above finished ground surface. A cover slab at least four (4) inches thick, adequately reinforced and having a diameter sufficient to extend to the outer edge of the casing shall be provided. The slab shall be constructed without joints. The top of the slab shall be sloped to drain to all sides and a watertight joint made where the slab rests on the well casing. A manhole, if installed, shall consist of a curb cast in the slab and extending four (4) inches above the slab. The manhole shall have a watertight cover having sides which overhang the curb at least two (2) inches.

1. If a vent is installed, it shall consist of pipe extending above the slab with the open end turned down and not less than six (6) inches above the slab. The open end shall be covered with twenty-four (24) mesh or finer screen of durable material. Venting is recommended.

2. Adequate sized pipe sleeve or sleeves shall be cast in place in the slab to accommodate the type of pump or pump piping proposed for the well.

(3) Bored or dug well - buried slab construction. The well casing shall be terminated at a depth of ten (10) feet or more below the ground surface. Well casing shall meet the requirements in Section 9 of this regulation. This casing shall be firmly imbedded in or connected to a pipe cast in a reinforced buried concrete slab. The casing shall be a minimum of four (4) inches in diameter and extend from the concrete slab to at least eight (8) inches above finished ground surface. The annular opening between the casing pipe and the well bore shall be filled with clean earth thoroughly tamped to minimize settling. The diameter of the well bore below the buried slab shall be a minimum of four (4) inches greater than the outer diameter of the well casing and shall be filled with pea gravel to the well bottom. (See Illustration G.)

(4) Driven well. The well point, drive pipe and joints shall be structurally suitable to prevent rupture during the driving of the well. If aids to driving are used, such as an augered starting hole or water jetting, the annular space around the drive pipe shall be sealed with cement grout or puddled clay. The type of pump proposed for the well will determine how the top ten (10) feet or more of the well shall be completed. If the working barrel of a hand pump is to be located below ground surface, the upper portion of the well shall be enclosed in steel or iron casing pipe to a point below the barrel. So called "frost pits" curbed with stone, brick, tile, etc., are prohibited.

(5) Radial collector well. Approved plans for the well shall be obtained from the cabinet before construction. Factors that will be considered for approval of a radial collector well will include depth of well, types of soil formations, location of well and sources of potential contamination in the surrounding area.

Section 9. Construction Materials and Other Requirements. (1) Casing and liner pipe. In selection of casing and liner pipe, consideration shall be given to the stress to which the pipe will be subjected during construction and the corrosiveness of the water with which it comes in contact. Used or reject pipe shall not be used.

(a) Steel well casing shall meet one (1) of the following standards: American Society For Testing Materials (ASTM) A-53-81A, A-120-82, A-589-81A, or American Petroleum Institute 5L, March, 1982 Edition and conform to the minimum standards given in Table B.

(b) Plastic well casing and liners shall meet the requirements of ASTM Standard F-480-81 and the National Sanitation Foundation Standard Number (NSF) 14-1980, Plastic Piping System Components and Related Materials. Evidence of compliance shall be inclusion in the current NSF listing and display of the NSF seal on each section of casing, and marking the casing in accordance with the requirements of ASTM Standard F-480-81.

(c) Plastic well casing and liners must be Standard Dimension Ratio (SDR) rated, have an Impact Classification of IC-1 in accordance with ASTM Standard F-480-81 as a minimum, and conform to the minimum requirements given in Table C.

(2) Outer casing. Casing intended for construction purposes only shall be of weight and design as necessary to be watertight and

permit installation without distortion or rupture to the specified depth, and shall be removed upon completion of the well.

(3) Joints. All casing and liner pipe joints shall be watertight.

(4) Screens. Screen openings shall provide the maximum amount of open area consistent with strength of screen and the grading of the water-bearing formation or gravel pack. The openings shall permit maximum transmitting ability without clogging or jamming. Screens shall be made of non-corrosive material.

(5) Drive shoe. Pipe that is to be driven shall be equipped with a drive shoe.

(6) Grouting guides. Protective casing that is to be grouted in the drill hole or annular opening shall be provided with a centering shoe and shall have sufficient guides or centralizers to permit the unobstructed flow and deposition of the thickness of grout specified.

(7) Cement grout. Procedures and materials for preparing and placing cement grout shall be as follows:

(a) Concrete grout. The mixture shall consist of cement, sand, and water in the proportion of one (1) bag of cement (ninety-four (94) pounds) and an equal volume of dry sand to not more than six (6) gallons of clean water.

(b) Neat cement grout. The mixture shall consist of one (1) bag of cement (ninety-four (94) pounds) to not more than six (6) gallons of clean water. Additives such as bentonite or aquajel or similar materials may be added up to six (6) percent by weight to increase fluidity and to control shrinkage.

(c) Application. All cement grouting shall be performed by adding the mixture from the bottom of the annular opening upward in one (1) continuous operation until the annular opening is filled or to the point of pitless adapter attachment. Bentonite, aquajel, or similar materials may be added to the annular opening in the manner indicated for grouting, prior to the cement grouting, to seal any small crevices or fissures and assure that the annular space is open.

(d) Setting time. Drilling operations shall not be resumed until the cement grout has set and hardened for at least forty-eight (48) hours when high-early-strength cement is used and at least seventy-two (72) hours when regular cement is used. Setting time may be reduced from forty-eight (48) hours with high-early-strength cement and seventy-two (72) hours with regular cement by addition of manufacturers' approved chemicals and following manufacturers' recommendations for setting time.

(8) Plumbness and alignment. The bore of the hole shall be sufficiently plumb and straight to receive the casing without binding. The casing shall be sufficiently plumb and straight that it will not interfere with installation and operation of the pump.

(9) Construction water. Water used in the drilling process shall be obtained from a source which will not result in contamination of the well.

(10) For air rotary drilling, water shall be injected into the air stream at the rate of approximately three (3) gallons per minute.

Section 10. Finishing and Testing. (1) Upper terminal. The casing or riser pipe shall be terminated at a height above ground surface

consistent with proposed plans for a pump house and pump installation, but not less than four (4) inches above ground surface or above any known conditions of flooding by drainage or runoff from the surrounding land. The well shall be capped watertight until pump installation is made.

(2) Disinfection. The well driller shall be responsible for properly disinfecting the well upon completion. Sufficient chlorine shall be introduced to give a dosage of 100 parts per million to the water in the well. (CAUTION: When working with chlorine, persons should be in well ventilated place. The powder or strong liquid should not come in contact with skin or clothing. Solutions are best handled in wood, plastic or crockery containers because metals are corroded by strong chlorine solutions.)

(a) Drilled wells. The disinfection of drilled wells shall be accomplished in accordance with the following:

1. Determine the amount of water in the well by multiplying the gallons per foot (from Table D) by the number of feet of water in the well.

2. For each 100 gallons of water in the well, use the amount of chlorine liquid or compound given in Table D. Mix this total amount in about ten (10) gallons of water. If dry granules or tablets are used, they may be added directly to drilled wells.

3. The total amount of this solution shall be poured into the top of the well before the seal is installed and splashed around the lining, or wall, of the well. Ensure that the solution has contacted all parts of the well.

4. Connect one (1) or more hoses from faucets on the discharge side of the pressure tank to the top of the well casing and start the pump, recirculating the water back into the well for at least fifteen (15) minutes. Then open each faucet in the system until a chlorine smell appears. Close all faucets. Seal the top of the well.

5. Let stand for several hours, preferably overnight.

6. After standing, operate the pump, discharging water from all outlets until all chlorine odor disappears. Faucets on fixtures discharging to septic tank systems should be throttled to a low flow to avoid overloading the disposal system.

(b) Dug wells. The disinfection of dug wells shall be accomplished in accordance with the following:

Diameter of well (in feet)	3	4	5	6	7	8	10
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Amount of 5.25% laundry bleach to use per foot of water (in cups)	1.5	3	4.5	6	9	12	18
---	-----	---	-----	---	---	----	----

Amount of 70% Hypochlorite granules to use per foot of water (in ounces)	1	2	3	4	6	8	12
--	---	---	---	---	---	---	----

1. The amount of disinfectant required is determined primarily by the amount of water in the well. The table above shows the amount of chlorine to use for each foot of water in the well, according to its diameter.

2. To determine the exact amount of bleach to

use, multiply the amount of disinfectant indicated as determined by the well's diameter times the number of feet of water.

3. This total amount of bleach shall be added to approximately ten (10) gallons of water, and splashed around the lining, or wall of the well. Be certain that the solution has contacted all parts of the well, using the entire amount of disinfectant. Seal the top of the well.

4. When this is done, pump enough water so the strong chlorine odor is evident. When the odor is detected, stop the pumping and allow the solution to remain in the well overnight.

5. After standing, operate the pump, discharging water from all outlets until all chlorine odor disappears. Faucets on fixtures discharging to septic tank systems shall be throttled to a low flow to avoid overloading the disposal system.

(c) Water samples. Upon completion of a new well or modification of an existing well, the driller shall give the owner information prepared by the cabinet explaining the importance of water well sampling, procedures for sampling, and how the water can be tested to assure a safe supply of water.

Section 11. Modification of Wells. (1) General. Wells constructed prior to the adoption of this regulation need not meet the criteria established. However, when a well is modified, reconstructed, or repaired, the work shall include those changes necessary to make the well conform to this section.

(2) Well pits.

(a) No new well pits shall be allowed. Existing well pits shall not be altered or changed.

(b) Existing pits will be accepted if the following conditions exist:

1. The pit shall be structurally sound and watertight. The casing shall extend at least twelve (12) inches above the pit or basement floor and have a well seal to prevent contaminants from entering the well.

2. A watertight manhole and cover must be provided for the pit.

(c) No existing well pit shall be modified to comply with subsection (2)(b) of this section. Existing pits which are not in compliance with subsection (2)(b) of this section shall be eliminated and the floor or one (1) wall of the pit shall be broken or removed and the pit shall be filled with compacted earth.

(4) Notification. Within thirty (30) days after modification of a well, the driller shall provide written notification of the modification on forms provided by the cabinet.

Section 12. Abandonment of Wells. (1) Abandoned wells. Abandoned water wells shall be filled with disinfected, dimensionally stable materials, compacted mechanically, if necessary, to avoid later settlement. Cement grouts and concrete do not require disinfection. Disinfection of fill materials shall be accomplished by using chlorine compounds such as sodium hypochlorite or calcium hypochlorite. Fill materials shall be clean (relatively free of clays and organic materials) before placement in the well. Disinfection shall be accomplished by dissolving sufficient chlorine compound to produce a calculated concentration of at least 100 parts per million (100 ppm) available

chlorine in double the volume of water in the well. The fill material shall be placed in the well after the water in the well has been so treated.

(2) Permanent bridges. Permanent bridges (Illustration H) may be used to avoid having to fill very deep holes below the deepest point at which a permanent seal is required. Permanent bridges shall be composed only of cement or cement-bearing minerals. The cement shall be allowed to harden for at least twenty-four (24) hours, if Type I cement is used, or for at least twelve (12) hours if Type III (high early strength) cement is used, before backfilling is continued. Temporary bridges used to provide a base for the permanent bridge shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction are acceptable.

(3) Placement of grout. Concrete or cement grout used as a sealing material in abandonment operations shall be introduced at the bottom of the well or interval to be sealed (or filled) and placed progressively upward to the top of the well. All such sealing materials shall be placed by the use of grout pipe, tremie, cement bucket or dump bailer, in such a way as to avoid segregation or dilution of the sealing materials. Dumping grout material from the top shall not be permitted. Seals intended to prevent vertical movement of water in the well or bore hole shall be composed of cement grout or concrete, except that where such seals must be placed within casing or liners, only neat cement grout may be used. Cement grout seals shall be placed by means of pumping through drop pipe or by use of a dump bailer, with placement beginning at the bottom and continuing upward. The minimum cement seal length, wherever dimensions permit, shall be ten (10) feet.

(4) Intermediate seals. Intermediate seals (Illustration I) of cement grout or concrete shall be placed in impermeable strata between aquifers which are identifiable as, or are suspected of being, hydraulically separated under natural, undisturbed conditions. Once the required cement seal has been installed, the remainder of the impermeable zone or non-producing zone between aquifers shall be filled with sand, sand and gravel, or cement-bearing mineral material.

(5) Seal at uppermost aquifer. A cement grout or concrete seal shall be installed in the least permeable zone immediately above the uppermost water-producing zone. Such seals shall be placed only in quiescent (non-flowing) water. Prior to sealing for closure of flowing wells, the driller shall provide the cabinet a closure plan and shall obtain cabinet approval for that plan. The cabinet may provide assistance, if necessary, in developing this plan. (See Illustration J.)

(6) Seals placed within casing, liners, filters, etc. Seal which must be placed in casing, liners, or filters require special attention. The material between the well and the face of the bore hole shall be thoroughly perforated, ripped, or otherwise disintegrated as the necessary first step. Neat cement only, or neat cement with a maximum of five (5) percent by weight of commercially processed bentonite clay, shall be used as the seal. Either of the following two (2) methods may be

used.

(a) The calculated amount of grout required to fill the well interval plus the annular space outside the lining shall be placed within the space to be cemented, running the cement through a special cementing packer manufactured for this purpose and installed immediately above the perforated or ripped zone. The cement shall be injected at a pressure calculated to be at least fifty (50) pounds per square inch psi greater than the normal hydrostatic pressure within the well at the point of injection.

(b) The calculated amount of cement grout required to fill the casing interval plus the annular space outside the lining, plus sufficient cement grout to fill an additional ten (10) feet of the lining, shall be introduced at the bottom of the interval to be cemented.

(7) Non-producing zones. Non-producing zones above the aquifer shall be filled with stable materials such as sand, sand and gravel, cement grout, or concrete. Non-producing zones above the uppermost aquifer seal shall be filled with materials less permeable than the surrounding undisturbed formations. The uppermost five (5) feet of the bore hole (at established ground surface) shall be filled with a material appropriate to the intended use of the land.

(8) Pre-existing contamination. An abandoned well which has been affected by salt water intrusion or any other contaminants shall be considered a special case, and the method of filling and sealing such wells shall be subject to individual review and written approval by the cabinet. In the sealing of a double or multiple cased well, the driller shall submit a drawing thereof with a description of the proposed procedure and materials to be used, for prior approval by the cabinet.

(9) Well abandonment records. Before equipment is removed from the site, the exact location of the abandoned well or drill hole shall be determined and recorded, tying in the location with permanent reference points. All information relative to the abandonment procedures and the location of the abandoned well shall be recorded on drillers log sheets provided by the cabinet with copies supplied to the cabinet and the owner of the land within thirty (30) days.

TABLE A

Lateral Sources of Contamination	Minimum Distances for Clay and Loam Soils
Cess Pools	150 feet
Leaching Pit	100 feet
Pit Privy	75 feet
Subsurface Seepage Tile	75 feet
Lateral Fields	70 feet
Manure Piles	75 feet
Septic Tank	50 feet
Barnyard	50 feet
Sewers (non-cast iron)	50 feet
(non-perforated)	
Sewers (cast-iron with watertight leaded or mechanical joints)	15 feet
Sewers (Schedule 40 or heavier plastic pipe with solvent cemented or elastomeric seal joints.) Pipe is solid pipe not perforated.	15 feet

TABLE A (cont'd)

Lateral Sources of Contamination	Minimum Distances for Clay and Loam Soils
Footing Drains (no connection to a sewer or a sump handling sewage)	10 feet
Pump House Floor Drain	2 feet

TABLE B

Casing and Liner Pipe Weights and Dimensions

Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot)
1	1.315	0.120	-
1 1/4	1.660	0.120	-
1 1/2	1.900	0.120	-
2	2.375	0.120	2.89
2 1/2	2.875	0.120	3.53
3	3.500	0.120	4.33
3 1/2	4.000	0.120	4.97
4	4.500	0.188	8.66
5	5.563	0.188	10.79
6	6.625	0.188	12.92
8	8.625	0.277	24.70
10	10.750	0.307	34.24
12	12.750	0.330	43.77
14	14.000	0.375	54.57
16	16.000	0.375	62.58
18	18.000	0.375	70.59
20	20.000	0.375	78.60

Pipe sizes not listed that are less than eight (8) inches in diameter shall match listed values as closely as possible.

Pipe sizes not listed that are eight (8) inches in diameter or greater shall be Schedule 30 pipe as a minimum.

TABLE C

Plastic Casing and Liner Pipe Specifications

Size (inches)	SDR	External Diameter (inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413
12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

TABLE D

Diameter of Well in Inches	Volume of Water in Gallons Per Foot of Depth	Disinfectant Required for Each 100 Gallons of Water
3	0.37	Laundry Bleach (5.25% chlorine) = 3 cups
4	0.65	



TABLE D (cont'd)

Diameter of Well in Inches	Volume of Water in Gallons Per Foot of Depth	Disinfectant Required for Each 100 Gallons of Water
5	1.0	Hypochlorite Granules (70% chlorine) = 2 ounces
6	1.5	
8	2.6	
10	4.1	
12	6.0	

1 cup = 8 ounces measuring cup  
(2 cups = 1 pint; 4 cups = 1 quart)

1 ounce = 1 heaping tablespoon granules  
(16 ounces = 1 pound)

(See Illustrations following the  
Regulatory Impact Analysis)

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on June 21, 1985 at 10 a.m. in the Auditorium of the Capital Plaza Tower in Frankfort. A person interested in attending this hearing shall submit by June 16, 1985, a written request to: A. Leon Smothers, Assistant Director, Division of Water, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601. Written comments will be accepted for the record until 4:30 p.m. on June 20, 1985.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: A. Leon Smothers

(1) Type and number of entities affected: These regulatory changes will affect about 200 water well drillers doing business in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation establishes drilling standards and materials requirements for the commercial practice of water well drilling. The provisions incorporated in these regulations are considered as minimum standards of practice comparable to those in such publications as AWWA Standard for Water Wells (first printed in 1946), EPA's Manual of Water Well Construction Practices, and Gibson and Singer's Water Well Manual and in the requirements of other states. Therefore, we feel that no additional costs will be incurred by most drillers; only those following less than generally accepted standards will have additional costs, and these are considered to be legitimate costs of business.

There will be additional costs to all drillers for testing of well water for disinfection, a requirement of law. This regulation requires that samples be submitted to a laboratory within six (6) hours of when it is taken. The additional cost of this requirement should have

a minimal effect on the cost imposed by law, provided the driller chooses the sampling time judiciously.

This regulation also incorporates a provision for plugging wells which are to be abandoned. This we believe to also be a reasonable requirement, but one which has not always been followed in the past - often with adverse effects on the aquifer as a consequence. The additional cost due to this requirement generally should run no more than \$400. There is no estimate available as to how frequently wells are plugged nor what current costs of plugging run.

2. Continuing costs or savings: Same as (1)(a)1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There will be no additional costs beyond those presented above. There will be no effect upon competition.

(b) Reporting and paperwork requirements: There is an application form which must be completed by each driller seeking certification.

(2) Effects on the promulgating administrative body: This regulation is part of the process for implementing the water well drillers legislation passed as HB 263 in the 1984 General Assembly.

(a) Direct and indirect costs or savings:

1. First year: The Division will spend approximately \$100,000 to administer all aspects of this program in the first year, about 20% of which will be for implementing the requirements of this regulation.

2. Continuing costs or savings: Same as (2)(a)1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The only paperwork requirement in these regulations is in the request for variance which drillers may request when they feel extraordinary circumstances exist.

(3) Assessment of anticipated effect on state and local revenues: These regulations should have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: During the development of these provisions, alternatives to each was considered and rejected.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. There is no classification system whereby to tier this regulation. The most obvious system for classifying drillers is by means of the equipment which they use. This regulation applies uniformly to all equipment types. Another distinction which can be made among drilling practices around the state is due to the geographic differences encountered. These circumstances have been taken into account in the regulation.

ILLUSTRATION A

Unconsolidated Formations with Non-Stable Overburden

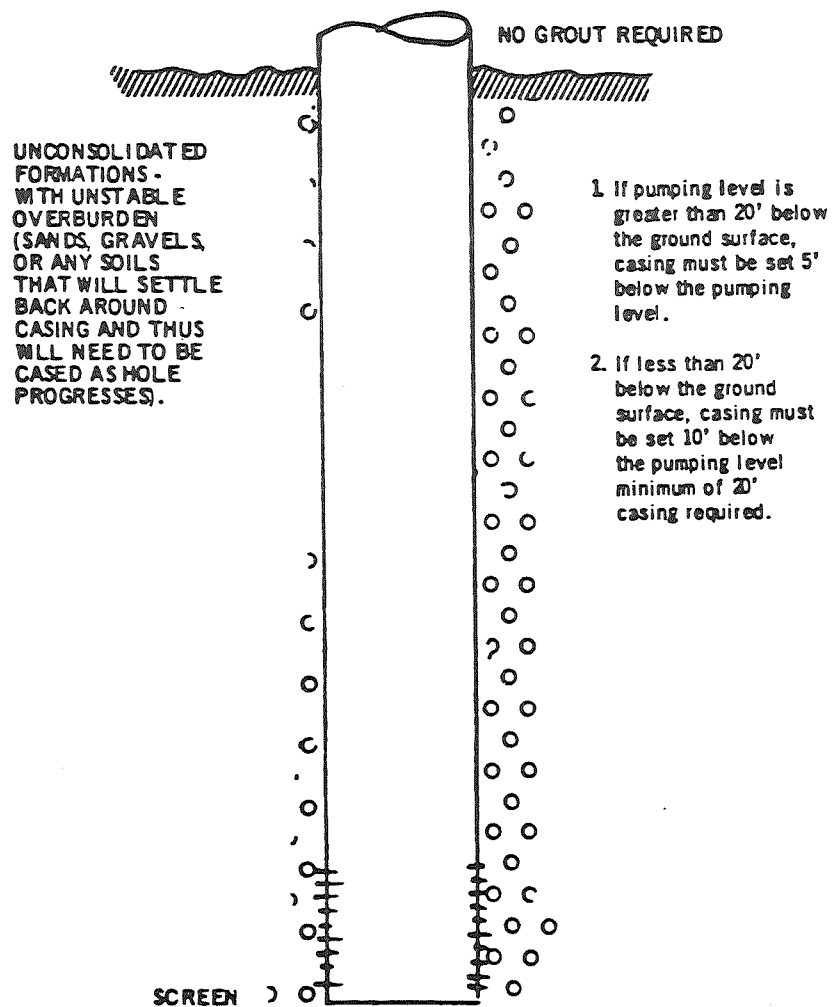


ILLUSTRATION B

Unconsolidated Formations with Stable Overburden

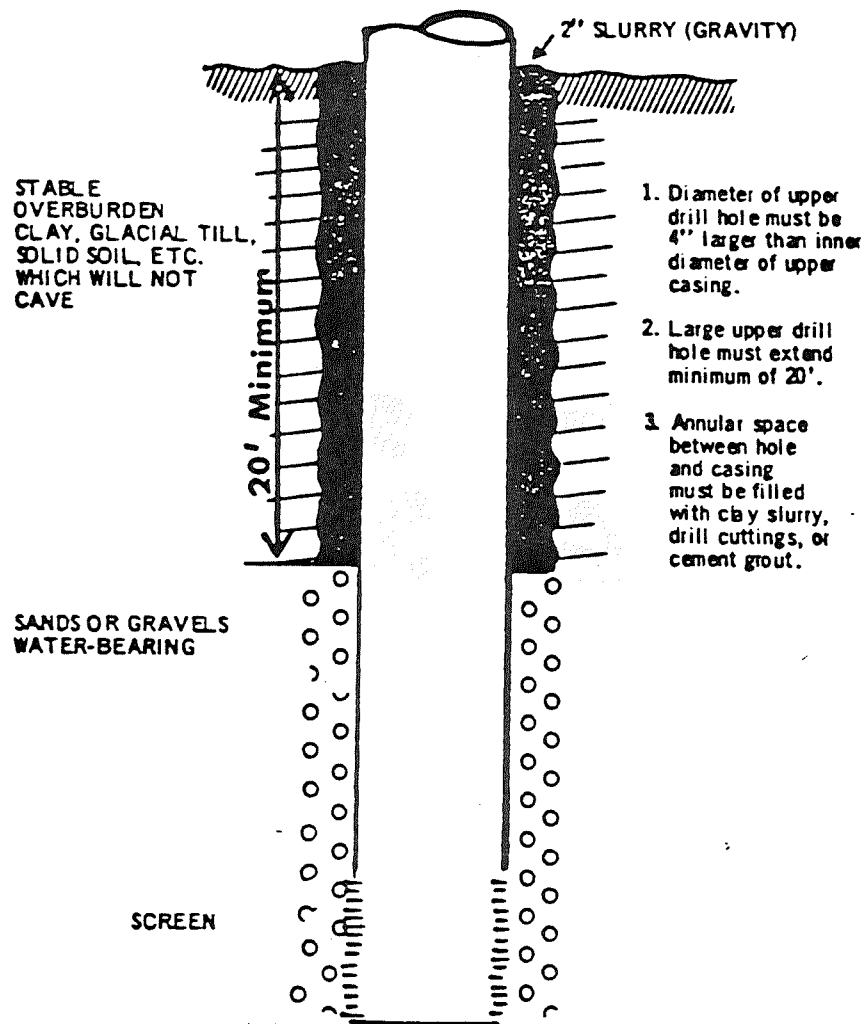


ILLUSTRATION C  
Gravel Wall Construction

(No Outer Casing)

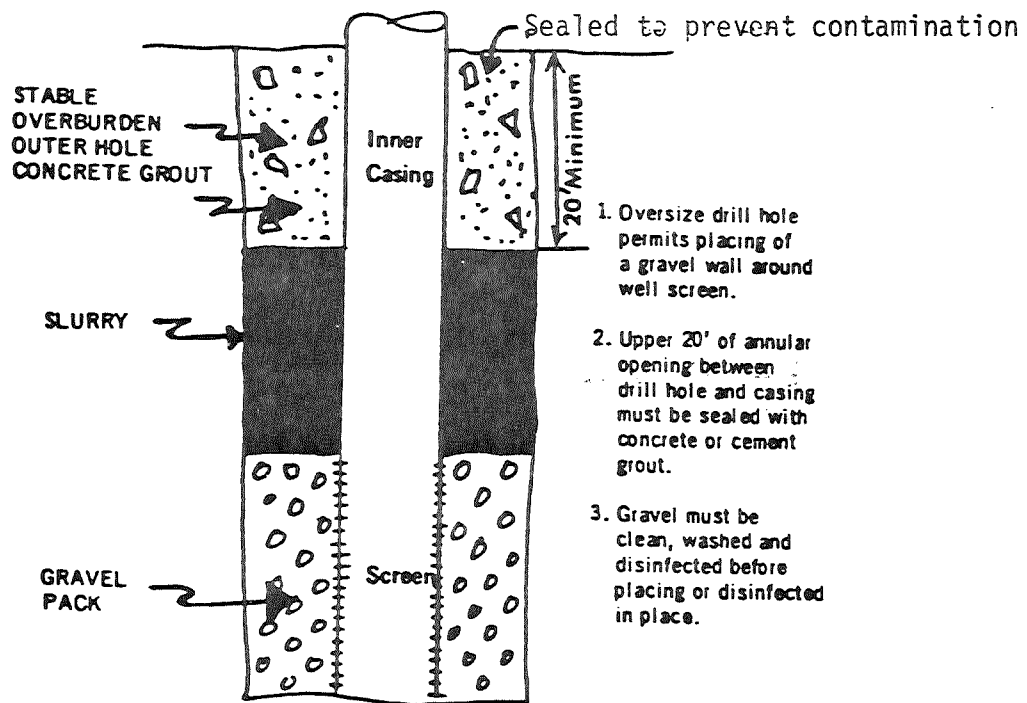


ILLUSTRATION D

Aquifer Below Creviced Formations

Earth Mantle Less Than 30 Feet Thick

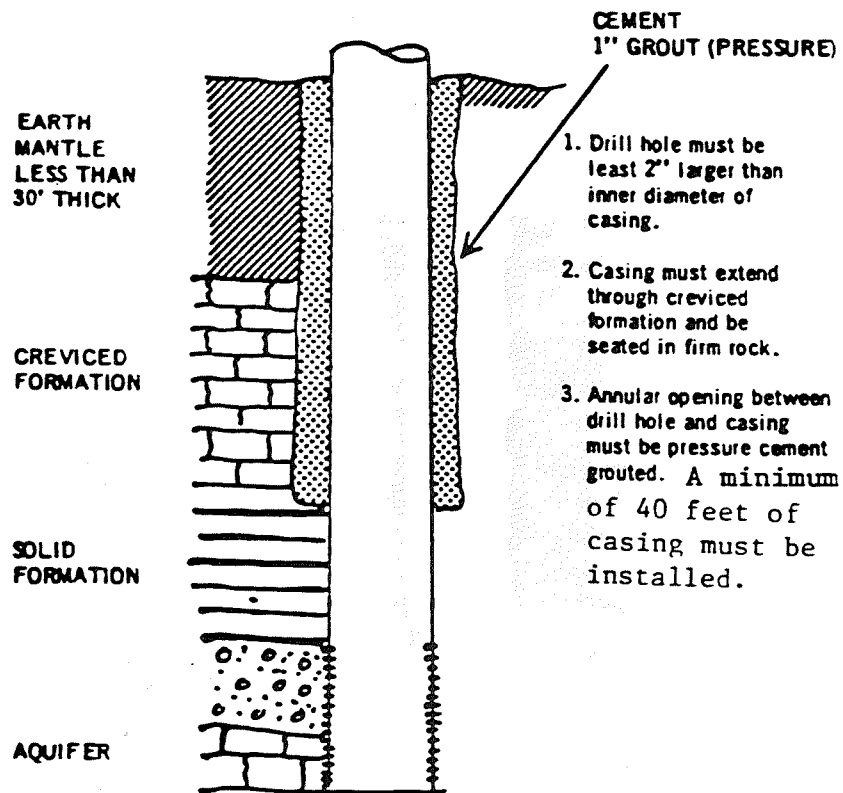


ILLUSTRATION E  
Crevised Formations

Earth Mantle Over 30 Feet Thick

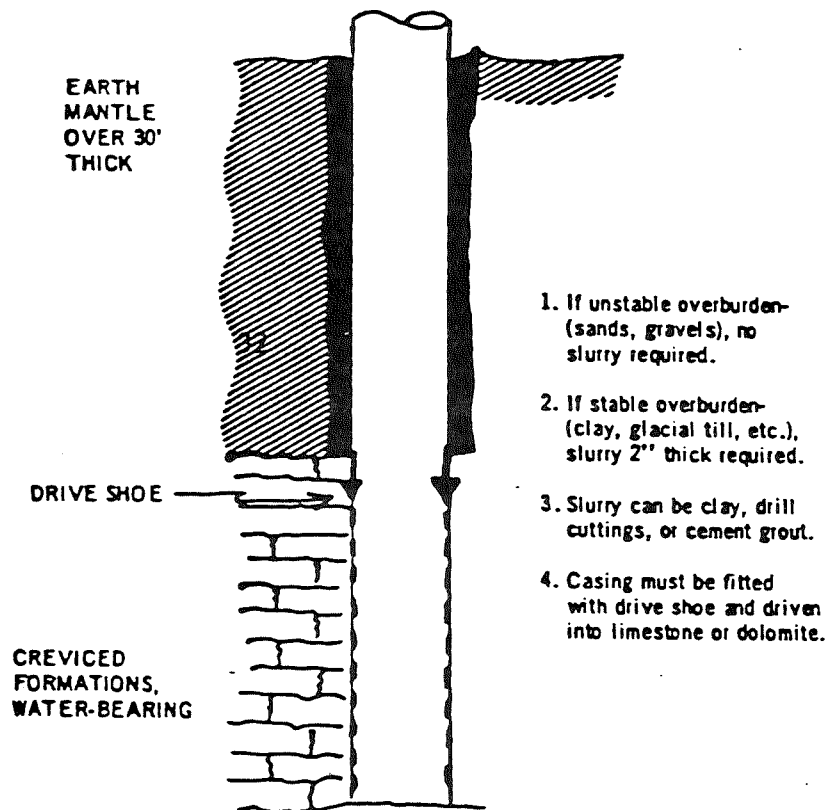


ILLUSTRATION F

Bored or Dug Well - Well Not Finished With Buried Slab

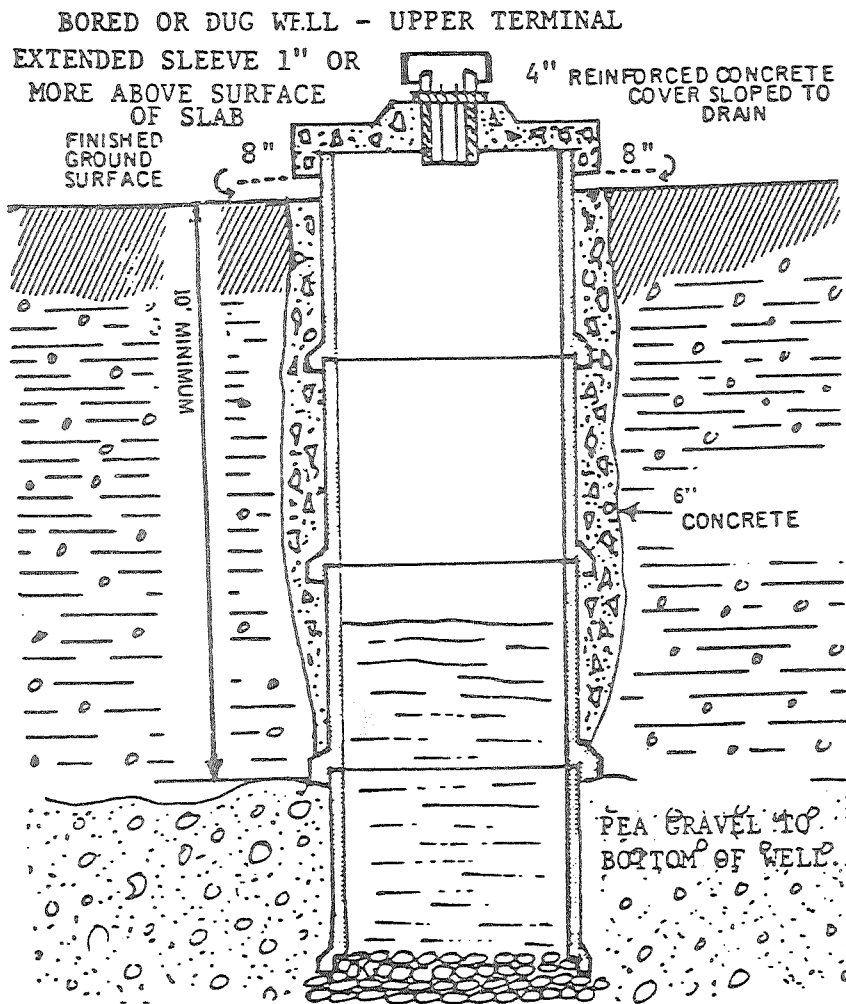
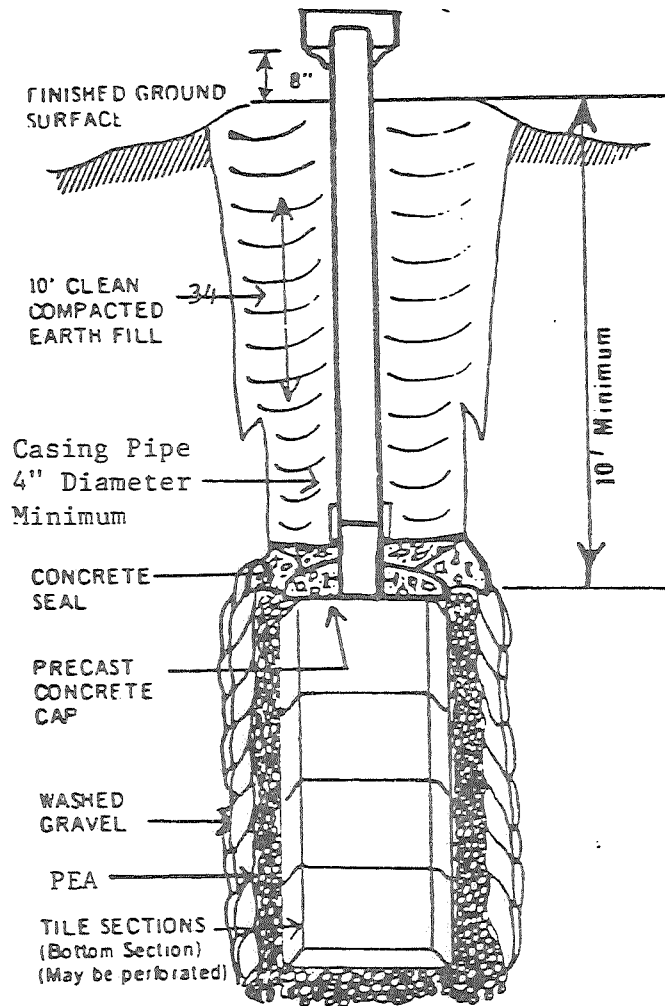




ILLUSTRATION G

Bored or Dug Well - Buried Slab Construction



# ILLUSTRATION H Permanent Bridge Seals

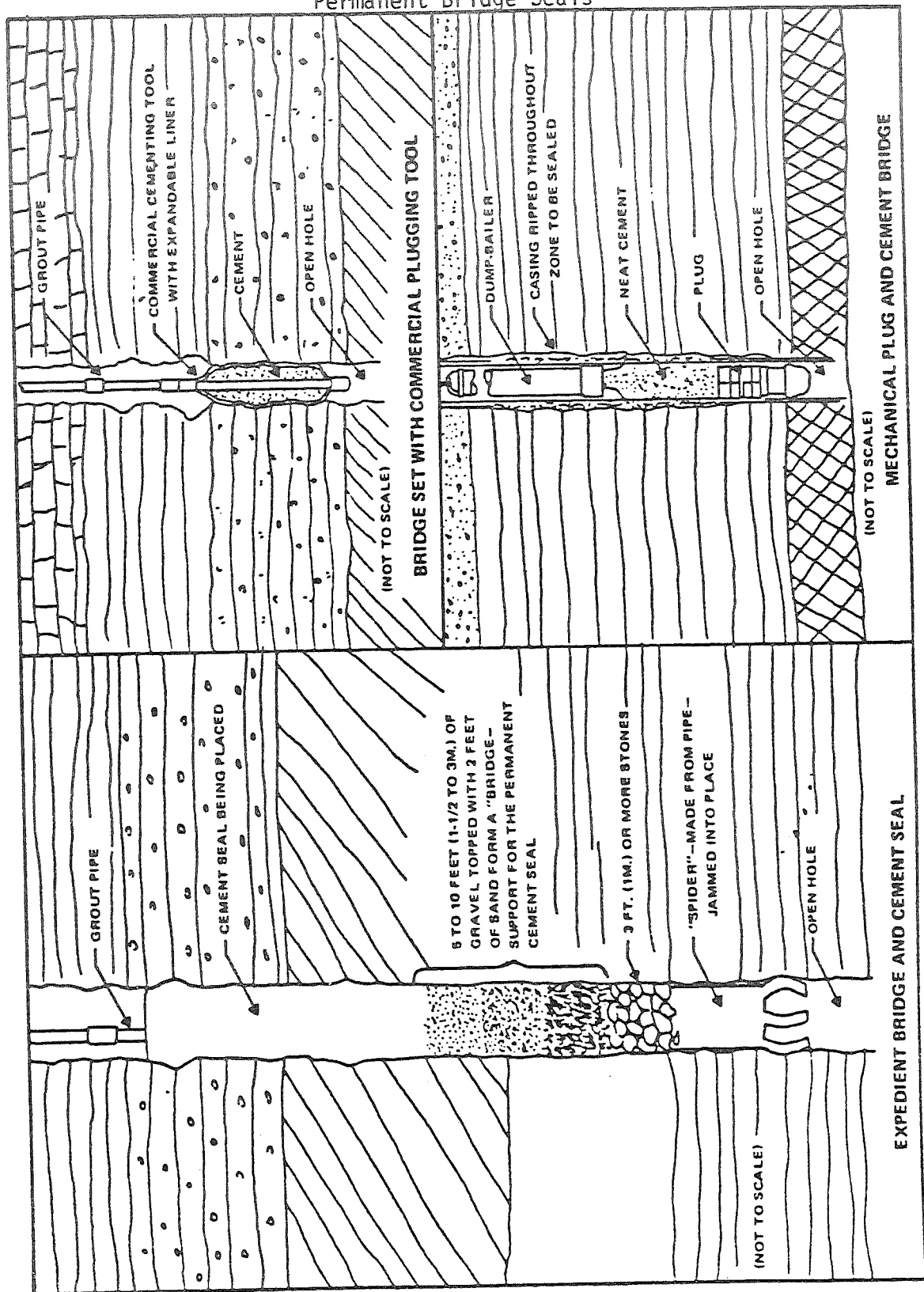


ILLUSTRATION I  
Intermediate Seals

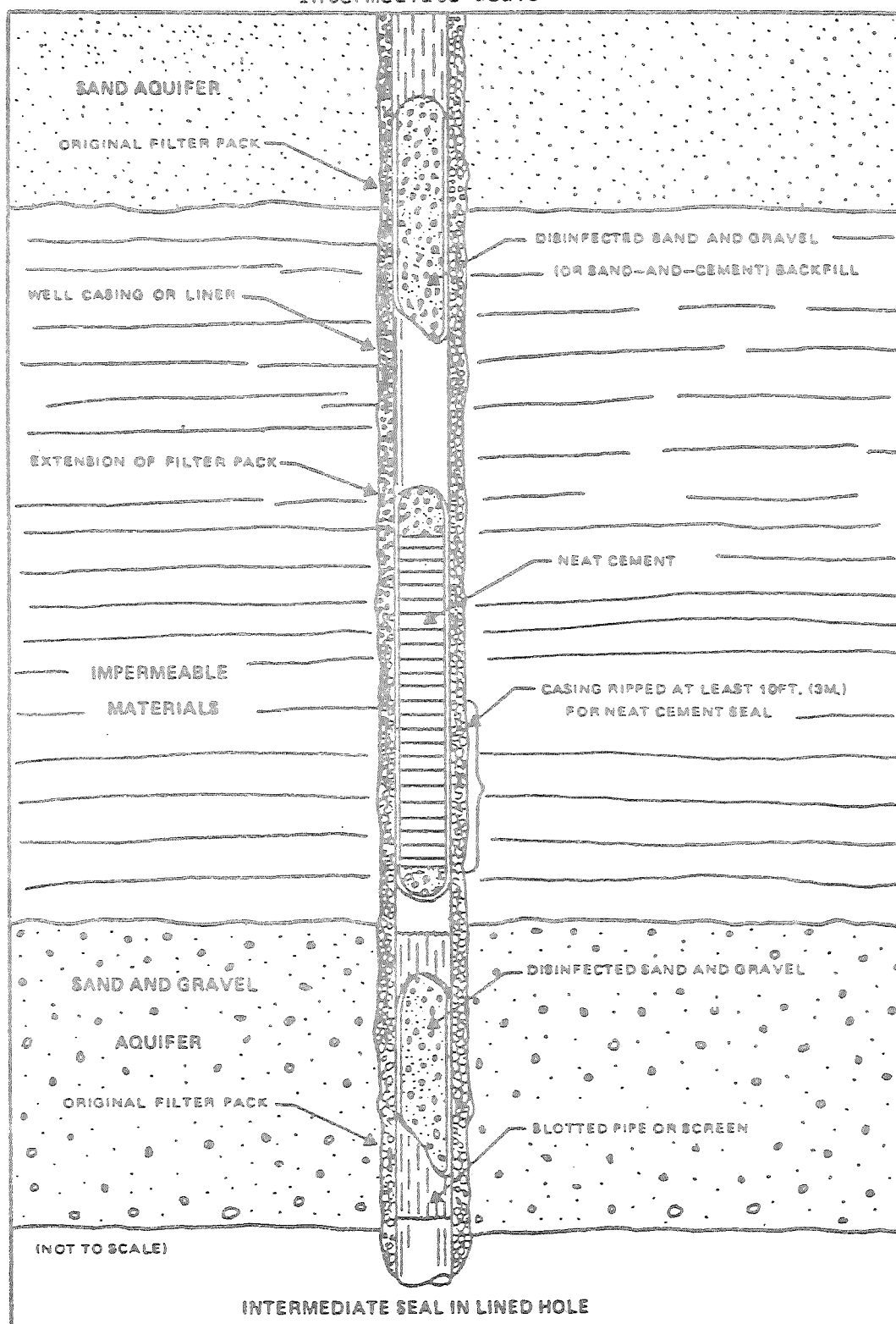
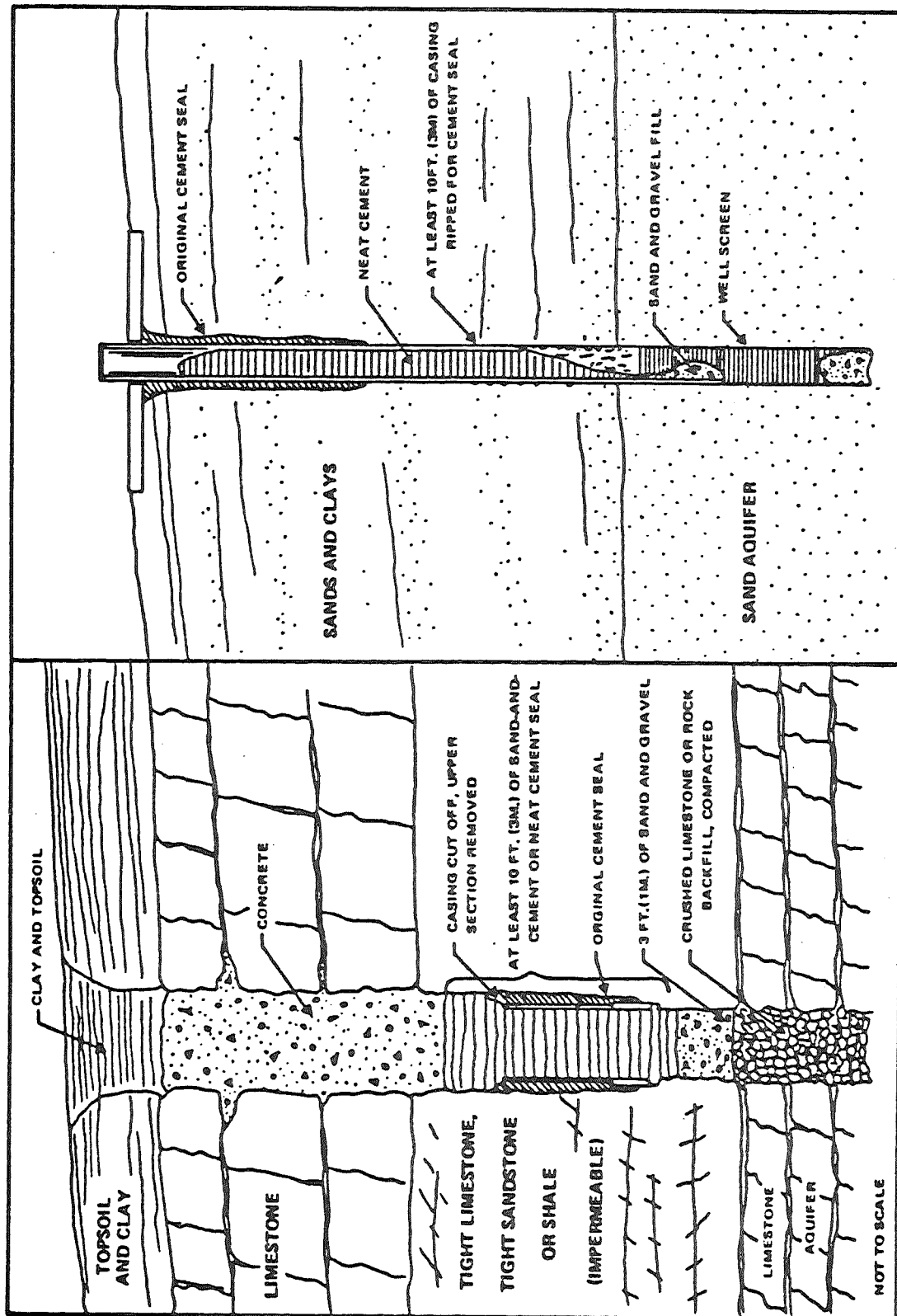


ILLUSTRATION J  
Uppermost Aquifer



UPPERMOST AQUIFER SEALS IN WELL ABANDONMENT

EDUCATION AND HUMANITIES CABINET  
Department of Education  
Office of Local Services

702 KAR 7:090. Requirements for coaches and other personnel staffing interscholastic athletic programs.

RELATES TO: KRS 156.070  
PURSUANT TO: KRS 156.070

NECESSITY AND FUNCTION: KRS 156.070 gives the State Board of Education the management and control of all programs, including interscholastic athletics, operated in the common schools, and further requires that the rules, regulations, and bylaws of any organization or agency designated by the state board to manage interscholastic athletics be approved by the state board. This regulation sets forth requirements for coaches and other personnel staffing interscholastic athletic programs.

Section 1. Head coaches and assistant coaches of interscholastic athletic teams representing the common schools shall be certified teachers and members of their regular school faculties. They shall be duly employed by their respective boards of education, and their entire salaries shall be paid by such board. They shall be employed a minimum of three(3) regular periods for teaching classes, including physical education; for supervision of study halls; and/or for exercising responsibilities in other activity assignments within the school schedule.

Section 2. (1) If a school district cannot fill assistant coaching positions under the provisions of Section 1 of this regulation, paraprofessionals holding teaching certificates or having completed at least sixty-four (64) semester hours of college credit, and acting under the direct supervision of a head coach and under the authority of the principal, may be annually employed by the local board of education as assistant coaches, but their entire salaries shall be paid by the employing board. The job description required by 704 KAR 15:080 shall be prepared, maintained, and followed.

(2) As long as a noncertified paraprofessional is acting within the scope and authority set forth in 704 KAR 15:080 and KRS 161.010 and 161.044, he or she may be employed by a local board of education to carry out noncoaching responsibilities in routine, noncoaching assignments, upon approval by the board of a job description setting forth such assignments.

Section 3. The requirements of this regulation shall be made a part of the rules, regulations, and bylaws of any organization or agency designated by the state board to manage interscholastic athletics, and shall be made to apply by said organization or agency to all its member schools.

ALICE McDONALD, Superintendent  
APPROVED BY AGENCY: May 7, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on June 25, 1985, at 9 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of

Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before June 20, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Laurel True

(1) Type and number of entities affected: 180 boards of education

(a) Direct and indirect costs or savings to those affected: This regulation is permissive. Local boards of education would make the decision on cost

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Paperwork will not be required by local boards of education

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: N.A.

(3) Assessment of anticipated effect on state and local revenues: Minimum effect on local revenues

(4) Assessment of alternative methods; reasons why alternatives were rejected: N.A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Tiering not applied since this regulation is permissive for local boards of education.

PUBLIC PROTECTION AND REGULATION CABINET  
Department of Alcoholic Beverage Control

804 KAR 11:030. Beer tastings.

RELATES TO: KRS 244.590  
PURSUANT TO: KRS 241.060

NECESSITY AND FUNCTION: KRS 244.590 prohibits a brewery or distributor from making any gift or rendering any kind of service to any licensee under KRS Chapter 243.040 which may tend to influence the licensee to purchase the product of the brewery or distributor to the exclusion in whole or in part of those offered for sale by other persons, except as prescribed by regulation. This regulation is designed to regulate said educational meetings sponsored by breweries, importers and/or distributors for retail malt beverage licensees in a manner consistent with modern marketing practices and

in conformance with relevant statutory provisions and legislative intent. Such educational affairs serve a useful purpose for the industry.

Section 1. Educational meetings, such as malt beverage tastings and the introduction of a new product or special packaging, sponsored by a brewery, importer and/or distributor for retail licensees under KRS 243.040 are permitted provided:

(a) Such meetings are held on licensed premises, other than premises licensed for the sale of package liquors at retail.

(b) Guests limited to retail malt beverage licensees and their employees.

(c) No service of any alcoholic beverage be made to minors.

(d) Activity limited to serving malt beverages and hors d'oeuvres.

(e) No alcoholic beverages may be given to be carried away from licensed premises by invited guests.

(f) No gift, or favor, of any kind may be given to the guests to be taken from the premises at which the meeting is conducted.

(g) Ten (10) days prior written notification must be given to the Kentucky Department of Alcoholic Beverage Control containing detailed plans of the activity including estimated cost per guest.

(h) The activity does not include brewery tours.

EDWARD A. FARRIS, Commissioner  
MELVIN WILSON, Secretary

APPROVED BY AGENCY: May 10, 1985

FILED WITH LRC: May 10, 1985 at 2:30 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on the above proposed regulation will be held on Wednesday, June 26, 1985, at 10 a.m., EDT, in the hearing room of the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky. Unless requests for a public hearing are received, in writing, five (5) working days before the hearing date, the public hearing will be cancelled. Those who may be interested in attending, please contact: Bonnie H. Hall, Secretary to the Board, Alcoholic Beverage Control Board, 123 Walnut, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward A. Farris

(1) Type and number of entities affected: N/A

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons

why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: N/A

Tiering:

Was tiering applied? No. Not applicable.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions Division of Securities

808 KAR 10:210. Registration exemptions - Federal Regulation D.

RELATES TO: KRS 292.410(1)

PURSUANT TO: KRS 292.500(3)

NECESSITY AND FUNCTION: To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q).

Section 1. Pursuant to KRS 292.410(1)(q), the director having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following transaction is determined to be exempt from the registration provisions of KRS 292.340 through KRS 292.390.

(1) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, Rules 230.501-230.503 and either 230.505 or 230.506 as made effective in Release No. 33-6389 and which satisfies the following further conditions and limitations:

(a) Persons receiving commissions, finders fees, or other remuneration in connection with sales of securities in reliance on this regulation are not relieved of compliance with KRS 292.330.

(b) No exemption under this rule shall be available for the securities of any issuer, if any of the parties or interest described in Securities Act of 1933, Regulation A, Rule 230.252, Sections (c), (d), (e) or (f):

1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's law within five (5) years prior to the commencement of the offering.

2. Has been convicted within five (5) years prior to commencement of the offering on any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

3. Is currently subject to any state's administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of securities in reliance upon this exemption.

4. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

6. The prohibitions of subparagraphs 1 through 3 and subparagraph 5 of this paragraph shall not apply if the party or interest subject to the disqualifying order is duly licensed to conduct securities related business in the state in which the administrative order or judgment was entered against such party or interest.

7. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(c) The issuer shall file with the Division of Securities a notice on Form D (17CFR239.550).

1. No later than fifteen (15) days after the first sale of securities to an investor in this state which results from an offer being made in reliance upon this exemption.

2. No later than thirty (30) days after the completion date of the offering of the issue.

3. Every six (6) months after the first sale of securities from the issue made in reliance on this regulation unless the final notice required by subparagraph 2 of this paragraph has been filed.

4. Every notice on Form D shall be manually signed by a person duly authorized by the issuer.

5. Any information furnished by the issuer to offerees shall be filed with the notice required pursuant to subparagraph 1 of this paragraph and, if such information is altered in any way during the course of the offering, the Division of Securities shall be notified of such amendment within fifteen (15) days after an offer using such amended information.

6. If more than one (1) notice is required to be filed pursuant to subparagraphs 1 through 3 of this paragraph, notices other than the original notice need only report the information required by Part C and any material change in the facts from those set forth in Parts A and B of the original notice.

7. There is no filing fee.

(d) In all sales to nonaccredited investors the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that both of the following conditions are satisfied:

1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situations and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed ten (10) percent

of the investor's net worth, it is suitable.

2. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risk of the prospective investment.

(2) Offers and sales which are exempt under this rule may be combined with offers and sales exempt under any other rule or section of this Act, however, nothing in this limitation shall act as an election. Should for any reason the offers and sales fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(3) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of this state's securities law.

(4) In any proceeding involving this rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(5) In view of the objective of this rule and the purpose and policies underlying the securities act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

BALLARD W. CASSADY, JR., Commissioner  
RONDA S. PAUL, Director

APPROVED BY AGENCY: May 15, 1985

FILED WITH LRC: May 15, 1985 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for June 26, 1985 at 10 a.m. at: Department of Financial Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leewood Drive, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle

(1) Type and number of entities affected: Persons utilizing Federal Regulation D of the Securities & Exchange Commission. Number indeterminable.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Regulation placed in a more logical order.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None



- (b) Reporting and paperwork requirements: None
- (3) Assessment of anticipated effect on state and local revenues: None
- (4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
- (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (6) Any additional information or comments: This change separates a section of 808 KAR 10:150 and places it apart from that regulation. There is no substantive change.

Tiering:  
Was tiering applied? Yes

**CABINET FOR HUMAN RESOURCES**  
**Department for Social Insurance**  
**Division of Management & Development**

**904 KAR 1:260. Coordination of benefits between the medical assistance program and the crime victims compensation board.**

RELATES TO: KRS 205.520  
PURSUANT TO: KRS 194.050

**NECESSITY AND FUNCTION:** The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance (hereinafter called "Medicaid") in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the methods and principles that will be used to determine the extent of Medicaid liability in situations involving Medicaid eligible individuals who are applicants for, or recipients of, award or grants from the Crime Victims Compensation Board (hereinafter called "the Board").

**Section 1. General Principles.** (1) The Medical Assistance ("Medicaid") Program is the payor of last resort and complies with the requirement shown in 904 KAR 1:005, Non-duplication of payments. Any provisions contained herein are subordinate to the provisions of 904 KAR 1:005 and shall not be construed in such a manner as to contravene the policies contained therein.

(2) The cabinet recognizes that the Crime Victims Compensation Board ("the Board") has discretion in the making of awards or grants, and that until an award or grant is made by the Board, third-party liability pursuant to 904 KAR 1:005 cannot be presumed to exist.

(3) In the event the Board makes a grant or award to a Medicaid eligible individual for Medicaid covered services, the amount payable by the Medicaid program shall be reduced by the amount of the assumed third-party obligation; if the Board makes no grant or award for Medicaid covered services, Medicaid program payments for covered services shall be made in accordance with usual program policy.

**Section 2. Procedures to Ensure Non-duplication of Payments.** The following methodology will be used by the Medicaid program to ensure that duplication of claims between Medicaid and the Board is reduced to the greatest extent possible.

(1) When the Board notifies the cabinet of a claim(s) which has been filed, the cabinet shall determine if the crime victim(s) is covered under the Medicaid program and advise the Board appropriately.

(2) When the Board notifies the cabinet of all itemized medical charges for which a Medicaid eligible victim is seeking compensation, the cabinet will advise the Board as to whether the medical service is covered under the Medicaid program.

JACK F. WADDELL, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

**PUBLIC HEARING SCHEDULED:** A public hearing on this regulation will be held on June 21, 1985, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985 of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West Frankfort, Kentucky 40621.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: Crime victims compensation board\*

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: \*This regulation is for the purpose of placing into regulatory form methodology relating to the exchange of information between the Crime Victims Compensation Board and the Medicaid Program.

Tiering:  
Was tiering applied? No. Not applicable to  
medicaid regulations.

**CABINET FOR HUMAN RESOURCES**  
**Department for Social Insurance**  
**Division of Management & Development**

**904 KAR 2:022. Kentucky administrative process  
for child support.**

RELATES TO: KRS 405.400 to 405.530

PURSUANT TO: KRS 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the child support program in accordance with Title IV-D of the Social Security Act, Title 45 CFR Sections 301, 302, 303, 304, 305, 306, and 307 and KRS 205.710 to 205.800. In addition, KRS 405.400 to 405.530, the Kentucky Administrative Procedures for Child Support Act, provides for the establishment and enforcement of child support obligations through administrative process when paternity is not in question. The administrative process supplements existing judicial remedies for non-support. Administrative process can be used to enforce support obligations for children receiving Aid to Families with Dependent Children benefits, hereinafter referred to as AFDC, as well as for non-AFDC children. This regulation sets forth the procedures the cabinet will employ in administratively enforcing child support obligations.

Section 1. Definitions. In addition to the terms defined in KRS 405.420, the following terms shall be defined as set forth below.

(1) "Administrative process" shall mean a method for establishing and enforcing child support obligations pursuant to KRS 405.400 to 405.530 and the provisions of this regulation.

(2) "Person in possession or control" shall mean the person who has custody of the earnings or property.

(3) "Order to withhold" shall mean an administrative order issued by the cabinet to a person in possession or control of the parent's earnings or property to withhold an amount equal to a stated arrearage to satisfy a delinquent child support obligation.

(4) "Order to deliver" shall mean an administrative order issued by the cabinet to have earnings or property, belonging to the parent, forwarded by the person in possession or control of the earnings or property to the cabinet to satisfy delinquent child support.

(5) "Delinquent support" shall mean past due and unpaid installments on an obligation determined under a court order or a Cabinet for Human Resources administrative order (KRS 405.430) for support of a dependent child, which is owed to or on behalf of the child, or for maintenance to the spouse (or former spouse) with whom the child is living, only if a maintenance obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under the state's IV-D plan.

(6) "Order to release withholding" shall mean an order to the person in possession or control of a parent's earnings or property notifying that person that the cabinet is releasing any

claim to the designated earnings or property.

Section 2. Administrative Enforcement. Whenever the cabinet determines that the parent owes delinquent support, the cabinet may implement administrative enforcement remedies to collect the delinquent support amounts. Personal property shall be exempted from attachment as specified in KRS Chapter 427.

(1) Order to withhold. When a delinquency of thirty-two (32) days or more is identified, the cabinet shall determine the total amount of support owed. The cabinet shall serve an order to withhold to the person(s) in possession or control of the parent's earnings or property. A copy of the order to withhold shall be provided to the parent. The order shall state the basis for and the amount of the delinquent support and shall state that the parent may offer a bond satisfactory to the cabinet to avoid losing possession of the property.

(a) When one (1) or more person(s) in possession or control of the parent's earnings or property is identified, the cabinet may issue and serve an order to withhold for each person in possession or control. When more than one (1) person in possession or control answers the order to withhold and the combined assets exceed the amount of the delinquent support, the cabinet shall:

1. Decide which person in possession or control to serve with an order to deliver. The cabinet may take into consideration the parent's request as to which source to withhold.

2. Send an order to release withholding to any person in possession or control not being served with an order to deliver.

3. Request only a portion of an asset to satisfy the delinquent support when the total asset exceeds the amount of delinquent support.

(b) The parent may contact the cabinet for an explanation of administrative enforcement. The cabinet may accept partial payment sufficient to release the order to withhold when deemed appropriate by the secretary.

(2) Order to deliver. When the employer or the person in possession or control of the earnings or property responds to the order to withhold, the cabinet may complete and serve on the person in possession or control an order to deliver the earnings and/or property to the cabinet. Earnings or property delivered to the cabinet in accordance with an order to deliver shall be applied to the amount of delinquent support pursuant to federal law.

(3) Order to release withholding. The cabinet shall issue and serve an order to release withholding on its claim on the parent's earnings or property when the stated delinquent support is satisfied.

JACK F. WADDELL, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: May 14, 1985

FILED WITH LRC: May 15, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on June 21, 1985, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by June 16, 1985 of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet

for Human Resources, 275 East Main Street, 4 West Frankfort, Kentucky 40621.

# REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: 49,516 first year (reflects AFDC and non-AFDC cases on which the cabinet is not currently pursuing enforcement).

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$190,000 saving expected. Figure represents collections over and above current collections (state's share). \$91,000 one time start up costs. Reflects costs incurred for offices, equipment and terminals (state's share).

2. Continuing costs or savings: \$653,000 annually in on-going collections (state's share). \$440,000 annually in on-going costs. Includes payment of salaries and leases (state's share).

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: First year - \$99,000. Continuing - \$213,000.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Not applicable.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of the May 13-14, 1985 Meeting

The May meeting of the Administrative Regulation Review Subcommittee was held on Monday, May 13, 1985 at 2 p.m. and on Tuesday, May 14, 1985 at 10 a.m. in Room 103. Representative Bill Brinkley, Chairman, called the meeting to order, and the secretary called the roll. On motion of Senator McCuiston, seconded by Representative Bruce, the minutes of the April 8-9, 1985 meeting were approved.

Present were:

Members: Representative Bill Brinkley, Chairman; Senators Harold Haering, and Pat McCuiston; Representatives James Bruce, Edward Holloway and Joe Meyer.

Guests: House Speaker Don Blandford; Richard Casey, Fred A. Lawson, Higher Education Assistance Authority; Jim Ahler, Board of Accountancy; Charles H. Switzer, Board of Auctioneers; Sarah M. Jackson, Carroll Roberts, Board of Hairdressers & Cosmetologists; Mary Romelfanger, William C. Shouse, Bernadette M. Sutherland, Board of Nursing; Greg Holmes, Board of Podiatry; Russell Barnett, George Risk, Jim Villines, Natural Resources & Environmental Protection Cabinet; L. Jane Chilton, Marshall Saufley, Justice Cabinet; David Garnett, Motor Vehicle Commission; Gary Bale, Cathy Crum, Sharon Darling, Robert Elder, James F. Fouché, Delmus Murrell, William C. Sanders, Jr., Bill Shouse, Robert Spillman, Lawrence M. Stamper, Department of Education; Rose Ashcraft, Tom Edwards, Guy B. Schoofield, Labor Cabinet; Carl B. Larsen, Harness Racing Commission; Barbara Coleman, Dudley J. Conner, Eva Ellis, Ked R. Fitzpatrick, Ron Holland, Greg Lawther, Clarence P. Marshall, Margaret A. Moman, David Nichols, Cabinet for Human Resources; Etta Ruth Kepp, Governor's Office for Policy and Management; Clyde Caudill, Jefferson County Public Schools;

Jean Hardy, Mrs. Diana Looney, Collins Lane PT0.  
LRC Staff: Susan Wunderlich, Joe Hood, June Mabry, Donna Valencia, Chris Lilly, Karen Shrock-Jones, Matt Patrick, and Carla Arnold.  
Press: Susan Warren, UPI; Paul Long, State Journal; Charles Wolfe, Associated Press

The Administrative Regulation Review Subcommittee met on May 13-14, 1985, and submits the following report:

The Subcommittee had no objections to the following regulations, but attached the following statements:

**Natural Resources and Environmental Protection Cabinet: Division of Waste Management: Department for Surface Mining and Reclamation: General Provisions**

405 KAR 7:070 (Certification of blasters.)

This regulation was technically amended to correct a typographical error.

**Performance Standards for Surface Mining Activities**

405 KAR 16:120 (Use of explosives.)

This regulation was technically amended to correct a typographical error.

**Performance Standards for Underground Mining Activities**

405 KAR 18:120 (Use of explosives.)

This regulation was technically amended to correct a typographical error.

In regard to the three regulations listed above, the subcommittee felt that the statutes relating to blasting certification are ambiguous and do not clearly separate the authority of the Natural Resources and Environmental Regulation Cabinet and the Department of Mines and Minerals. Therefore, the subcommittee recommends

that KRS Chapters 350 and 351 be clarified during the next session of the General Assembly.

**Education and Humanities Cabinet: Department of Education: Office of Local Services: Kindergarten, Nursery Schools**

704 KAR 5:050 (Public school kindergarten programs and successful completion of kindergarten; accreditation of non-public programs.) The subcommittee questioned portions of the regulation dealing with non-public kindergartens and the effect that attendance would have concerning placement in the first grade in public schools. Several questions were raised relating to private schools' noncompliance with necessary documentation for such placement. The subcommittee moved that the following statement be attached to this regulation: "Concerning the requirements of Section 7(2), the subcommittee, by unanimous opinion, feels that a written affidavit from the parents concerning attendance at a non-public kindergarten should be acceptable if that non-public kindergarten fails to submit appropriate documentation."

The Subcommittee determined that the following regulations, as amended, complied with the requirements of KRS Chapter 13A:

**Justice Cabinet: Kentucky Law Enforcement Council**

503 KAR 1:090 (Approval of course curriculums.) This regulation was amended to clarify the council's authority to require curriculums to indicate and justify the "passing" performance level on graded exercises in law enforcement courses.

503 KAR 1:100 (Certification of instructors.) This regulation was amended to clarify the waiver of certain certification requirements.

503 KAR 1:110 (Basic training; graduation requirements; records.) This regulation was amended to clarify the trainee requirements to successfully complete a basic training course.

503 KAR 1:120 (In-service training; graduation requirements; recognized courses; records.) This regulation was amended to clarify the trainee requirements to successfully complete an in-service training course.

**Law Enforcement Foundation Program Fund**

503 KAR 5:080 (Definitions; repealer.) This regulation was amended to delete a paragraph relating to the termination of police service.

503 KAR 5:100 (Disbursement of salary supplement funds; audits.) This regulation was amended to reflect where forms for acknowledging receipt of funds may be obtained.

503 KAR 5:110 (Suspension or termination of salary supplement funds; criminal penalties.) This regulation was amended to delete the sentence requiring salary supplement funds to be returned by a local unit while in noncompliance with the statutes.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

**Kentucky Higher Education Assistance Authority**

11 KAR 4:050 (Set off of authority claims.)

**General Government Cabinet: Board of Accountancy**

201 KAR 1:030 (Employees.)

201 KAR 1:035 (Application to take examinations.)

201 KAR 1:040 (Examination; notice, procedure for conducting.)

201 KAR 1:045 (Subjects of examination; grading; re-examination.)

201 KAR 1:050 (Certificate application.)

201 KAR 1:065 (Annual fees.)

201 KAR 1:090 (Practice by non-residents.)

201 KAR 1:095 (Code of ethics.) This regulation was technically amended to reflect the adoption date of the material incorporated by reference and where copies of that material may be obtained.

**Board of Auctioneers**

201 KAR 3:005 (Name required on advertising.)

201 KAR 3:015 (Experience requirements for principal auctioneers.)

**Board of Hairdressers and Cosmetologists**

201 KAR 12:010 (Administrator's duties.)

201 KAR 12:020 (Examination.) This regulation was technically amended to clarify that applicants for licensure who completed hours in another state must submit a certification from the board of the state in which the hours were completed.

201 KAR 12:031 (Replacement of license, duplicate license.)

201 KAR 12:040 (Apprentices; ratio to operators.)

201 KAR 12:060 (Inspections.)

201 KAR 12:082 (School's course of instruction.)

201 KAR 12:101 (Equipment sanitation.)

201 KAR 12:150 (School records.) This regulation was technically amended to clarify that a student's permit and certification of hours completed shall be sent to the board within ten days of the student's withdrawal, dismissal, or completion of 1800 hours.

**Board of Nursing**

201 KAR 20:056 (Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.)

201 KAR 20:057 (Scope and standards of practice of advanced registered nurse practitioners.) This regulation was technically amended to list national organizations recognized in 201 KAR 20:056 and to clarify where copies of the board's standards and functions could be obtained or reviewed.

**Board of Podiatry**

201 KAR 25:011 (Approved schools; examination application, fees.)

201 KAR 25:021 (Annual renewal notice for licenses, fees.)

**Natural Resources and Environmental Protection Cabinet: Division of Waste Management: General Administrative Procedures**

401 KAR 30:070 (Reference documents.)

**Solid Waste Facilities**

401 KAR 47:020 (Solid waste permit process.)

401 KAR 47:050 (Landfarming.)

**Justice Cabinet: Kentucky Law Enforcement Council**

503 KAR 1:060 (Definitions; repealer.)

503 KAR 1:070 (Training; qualifications; application.)

503 KAR 1:080 (Certification of schools.)

503 KAR 1:130 (Review of council and school decisions; appeal to circuit court.)

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**Law Enforcement Foundation Program Fund**

503 KAR 5:090 (Participation; requirements, application, withdrawal.)  
503 KAR 5:120 (Review of fund administrator's decisions; appeal to circuit court.)

**Transportation Cabinet: Motor Vehicle Commission**

605 KAR 1:030 (Applications.)

**Education and Humanities Cabinet: Department of Education: Office of Local Services: Buildings and Grounds**

702 KAR 4:020 (Plans and specifications for construction.)

702 KAR 4:030 (Local board's contract with architect, engineer.)

**School Terms, Attendance, Operation**

702 KAR 7:070 (Interscholastic athletic eligibility and requirements; redshirting prohibited.)

702 KAR 7:080 (Recruiting of student athletes prohibited.)

**Office of Instruction: Textbooks, Library and Instructional Materials**

704 KAR 3:005 (Educational Improvement Act.)

704 KAR 3:035 (Annual in-service plan.)

704 KAR 3:290 (Chapter 1, ECIA annual program plan.)

704 KAR 3:292 (Chapter 1, ECIA migrant plan.)

704 KAR 3:325 (Effective Industrial Leadership Act.)

704 KAR 3:350 (Repeal of 704 KAR 3:052 and 3:295.)

**Teacher Certification**

704 KAR 20:076 (Elementary teacher's endorsement for middle grades.)

704 KAR 20:078 (High school teacher's endorsement for middle grades.)

704 KAR 20:080 (Provisional middle grades certificate.)

704 KAR 20:210 (Substitute teachers.)

**Office of Programs: Adult Education**

709 KAR 1:050 (Adult plan.)

709 KAR 1:060 (Standard for academic programs for postsecondary and adult students.)

**Labor Cabinet: Occupational Safety and Health**

803 KAR 2:020 (Adoption of 29 CFR Part 1910.)

803 KAR 2:030 (Adoption of 29 CFR Part 1926.)

**Public Protection and Regulation Cabinet: Quarter Horse, Appaloosa, and Arabian Commission**

812 KAR 1:020 (Licensing procedures.)

812 KAR 1:030 (Racing officials.)

812 KAR 1:035 (Association.)

812 KAR 1:060 (Pari-mutuel wagering.)

812 KAR 1:070 (Entries, subscriptions and declarations.)

812 KAR 1:080 (Claiming races.)

**Cabinet for Human Resources: Department for Health Services: Maternal and Child Health**

202 KAR 4:015 (Nurse midwifery.)

**Sanitation**

202 KAR 10:085 (Kentucky onsite sewage disposal systems.)

**Department for Employment Services: Unemployment Insurance**

203 KAR 5:260 (Unemployment insurance procedures.)

**Department for Social Insurance: Medical Assistance**

204 KAR 1:000 (Physicians' services.)

204 KAR 1:013 (Payments for hospital inpatient services.)

204 KAR 1:022 (Skilled nursing facility services.)

204 KAR 1:024 (Intermediate care facility services.)

The following regulations were deferred at the agency's request:

**General Government Cabinet: Board of Pharmacy**

201 KAR 2:010 (Schools approved by the board.)

**Public Protection and Regulation Cabinet: Public Service Commission: Utilities**

807 KAR 5:001 (Rules of procedure.)

**Quarter Horse, Appaloosa, and Arabian Commission**

812 KAR 1:050 (Jockeys.)

**Housing, Buildings, and Construction: Kentucky Building Code**

815 KAR 7:010 (Administration and enforcement.)

815 KAR 7:020 (Building code.)

**Cabinet for Human Resources: Department for Health Services: Certificate of Need and Licensure**

202 KAR 20:016 (Hospitals operation and services.)

202 KAR 20:086 (Intermediate care facilities for the mentally retarded and developmentally disabled.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11:15 a.m. until June 3, 1985.



CUMULATIVE SUPPLEMENT

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KRS Index.....	L15
Subject Index to Volume 11.....	L25



## LOCATOR INDEX -- EFFECTIVE DATES

NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.

## VOLUME 10

Regulation	10 Ky.R. Page No.	Effective Date
400 KAR 2:020	1206	8-7-84
405 KAR 1:015	1215	8-7-84
405 KAR 3:015	1216	8-7-84
405 KAR 7:015	1216	8-7-84
405 KAR 30:015	1218	8-7-84
900 KAR 3:010	1226	8-7-84

## VOLUME 11

Emergency Regulation	11 Ky.R. Page No.	Effective Date	Emergency Regulation	11 Ky.R. Page No.	Effective Date
40 KAR 3:010E	923	10-24-84	401 KAR 4:200E	3	5-16-84
Replaced	1006	1-7-85	Replaced	176	8-7-84
105 KAR 1:080E	535	8-31-84	401 KAR 5:200E	4	5-16-84
Replaced	616	11-13-84	Replaced	177	8-7-84
109 KAR 9:010E	1	6-15-84	401 KAR 6:200E	5	5-16-84
Replaced	93	8-7-84	Replaced	178	8-7-84
200 KAR 8:030E	1017	12-14-84	401 KAR 30:070E	6	5-16-84
Replaced	1095	2-12-85	Replaced	179	8-7-84
201 KAR 9:021E	123	7-12-84	401 KAR 50:016E	7	5-16-84
Replaced	553	10-9-84	Replaced	179	8-7-84
Resubmitted	1115	12-14-84	402 KAR 3:010E	536	9-13-84
Replaced	1257	2-12-85	Replaced	669	11-13-84
301 KAR 1:140E	692	10-2-84	405 KAR 1:015E	7	5-16-84
Replaced	620	11-13-84	Replaced		8-7-84
301 KAR 2:044E	387	8-1-84	405 KAR 3:015E	8	5-16-84
Replaced	422	10-9-84	Replaced		8-7-84
301 KAR 2:200E	693	10-9-84	405 KAR 7:015E	8	5-16-84
Replaced	880	12-11-84	Replaced		8-7-84
302 KAR 16:010E	125	7-12-84	405 KAR 7:020E	1737	5-7-85
Replaced	399	9-11-84	405 KAR 8:030E	1745	5-7-85
302 KAR 16:020E	126	7-12-84	405 KAR 8:040E	1757	5-7-85
Replaced	400	9-11-84	405 KAR 10:035E	388	7-16-84
Resubmitted	1575	4-11-85	Replaced	577	10-9-84
302 KAR 16:030E	126	7-12-84	405 KAR 16:020E	390	7-16-84
Replaced	401	9-11-84	Replaced	578	10-9-84
302 KAR 16:040E	126	7-12-84	405 KAR 16:110E	1770	5-7-85
Replaced	324	9-11-84	405 KAR 18:110E	1771	5-7-85
302 KAR 16:050E	127	7-12-84	405 KAR 30:015E	10	5-16-84
Replaced	324	9-11-84	Replaced		8-7-84
302 KAR 16:060E	1576	4-11-85	501 KAR 6:010E	10	5-16-84
302 KAR 20:040E	1729	4-23-85	Replaced		6-28-84
302 KAR 20:055E	1732	4-23-85	600 KAR 1:030E	536	8-28-84
302 KAR 20:065E	1733	4-23-85	Replaced	517	10-9-84
302 KAR 20:070E	1734	4-23-85	601 KAR 1:015E	128	7-13-84
302 KAR 20:150E	2	6-5-84	Replaced	332	9-11-84
Replaced	401	9-11-84	601 KAR 1:130E	129	7-13-84
302 KAR 20:160E	3	6-5-84	Expired		10-30-84
Expired		9-29-84	601 KAR 9:011E	130	7-13-84
302 KAR 20:170E	127	7-12-84	Replaced	335	9-11-84
Expired		10-30-84	601 KAR 9:013E	130	7-13-84
302 KAR 20:180E	1241	1-30-85	Replaced	240	9-11-84
Replaced	1343	4-9-85	601 KAR 9:074E	131	7-13-84
302 KAR 20:190E	1576	4-11-85	Replaced	581	10-9-84
302 KAR 31:025E	1576	4-11-85	601 KAR 13:040E	134	7-13-84
302 KAR 34:010E	128	7-12-84	Replaced	335	9-11-84
Replaced	402	10-9-84	601 KAR 13:050E	135	7-13-84
302 KAR 34:020E	1018	11-15-84	Replaced	699	10-9-84
Replaced	1006	1-7-85	601 KAR 35:010E	136	7-13-84
302 KAR 34:030E	1580	4-11-85	Expired		10-30-84

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Emergency Regulation	11 Ky.R. Page No.	Effective Date	Emergency Regulation	11 Ky.R. Page No.	Effective Date
601 KAR 35:020E	137	7-13-84	902 KAR 12:080E	24	5-21-84
Replaced	585	10-9-84	Replaced		6-28-84
601 KAR 35:040E	139	7-13-84	902 KAR 13:050E	1365	3-1-85
Replaced	587	10-9-84	Replaced	1328	4-9-85
601 KAR 35:050E	139	7-13-84	902 KAR 13:100E	393	8-2-84
Replaced	587	10-9-84	Replaced	526	10-9-84
602 KAR 15:020E	140	7-13-84	902 KAR 17:010E	1019	12-13-84
Replaced	549	9-11-84	Replaced	999	1-7-85
603 KAR 5:120E	1363	2-26-85	902 KAR 20:006E	539	8-27-84
Replaced	1225	3-12-85	Replaced	460	10-9-84
603 KAR 5:130E	141	7-13-84	902 KAR 45:130E	25	5-21-84
Expired		10-30-84	Replaced	112	8-7-84
603 KAR 7:020E	142	7-13-84	902 KAR 45:140E	25	5-21-84
Replaced	346	9-11-84	Replaced	112	8-7-84
603 KAR 7:030E	142	7-13-84	902 KAR 50:090E	26	5-21-84
Replaced	347	9-11-84	Replaced	112	8-7-84
603 KAR 7:040E	143	7-13-84	902 KAR 50:100E	27	5-21-84
Replaced	348	9-11-84	Replaced	114	8-7-84
603 KAR 7:050E	143	7-13-84	902 KAR 55:015E	1580	3-26-85
Replaced	349	9-11-84	902 KAR 55:020E	1581	3-26-85
603 KAR 7:060E	144	7-13-84	902 KAR 55:030E	1582	3-26-85
Replaced	349	9-11-84	902 KAR 55:045E	1583	3-26-85
603 KAR 7:070E	144	7-13-84	903 KAR 5:150E	1246	1-21-85
Replaced	350	9-11-84	Replaced	1196	3-12-85
702 KAR 1:120E	697	9-21-84	903 KAR 5:280E	1247	1-21-85
Replaced	671	11-13-84	Replaced	1370	3-12-85
704 KAR 20:310E	1243	1-15-85	904 KAR 1:004E	149	7-6-84
Replaced	1230	3-12-85	Replaced	280	9-11-84
804 KAR 9:050E	144	7-11-84	Resubmitted	932	10-19-84
Replaced	361	9-11-84	Replaced	842	12-11-84
807 KAR 5:006E	924	10-23-84	Resubmitted	1117	1-9-85
Replaced	1048	1-7-85	Reprint	1350	
815 KAR 7:080E	145	7-13-84	Replaced	1354	3-12-85
Replaced	372	9-11-84	904 KAR 1:011E	936	10-19-84
900 KAR 1:011E	15	5-21-84	Replaced	846	12-11-84
Replaced	102	8-7-84	Resubmitted	1121	1-9-85
900 KAR 1:030E	16	5-16-84	Replaced	1205	3-12-85
Replaced	103	8-7-84	904 KAR 1:020E	697	9-19-84
900 KAR 1:040E	17	5-16-84	Replaced	658	11-13-84
Replaced	103	8-7-84	904 KAR 1:036E	153	7-6-84
900 KAR 3:010E	17	5-16-84	Replaced	284	9-11-84
Replaced		8-7-84	Resubmitted	939	10-19-84
902 KAR 1:340E	18	5-16-84	Replaced	849	12-11-84
Expired		9-29-84	904 KAR 1:045E	544	8-27-84
902 KAR 4:015E	1245	2-12-85	Replaced	290	9-11-84
Replaced	1608	5-14-85	904 KAR 1:055E	158	7-6-84
902 KAR 4:050E	18	5-21-84	Replaced	291	9-11-84
Replaced		6-28-84	904 KAR 1:061E	945	10-19-84
902 KAR 4:060E	19	5-21-84	Replaced	854	12-11-84
Replaced	104	8-7-84	904 KAR 1:250E	28	5-16-84
902 KAR 4:070E	19	5-21-84	Replaced		6-28-84
Replaced	104	8-7-84	Resubmitted	947	10-19-84
902 KAR 4:080E	20	5-21-84	Replaced	856	12-11-84
Replaced	105	8-7-84	Resubmitted	1249	1-21-85
902 KAR 4:090E	147	6-20-84	Replaced	1208	3-12-85
Replaced	105	8-7-84	Resubmitted	1583	4-3-85
902 KAR 6:060E	537	8-27-84	904 KAR 1:270E	1020	12-13-84
Replaced	374	9-11-84	Replaced	1012	1-7-85
902 KAR 8:020E	20	5-21-84	904 KAR 1:280E	1021	12-13-84
Replaced		7-10-84	Replaced	1013	1-7-85
Resubmitted	538	9-13-84	904 KAR 2:006E	948	10-19-84
Replaced	653	11-13-84	Replaced	858	12-11-84
Resubmitted	1773	5-9-85	Resubmitted	1585	4-1-85
902 KAR 8:030E	21	5-21-84	Replaced		5-17-85
Replaced	106	8-7-84	Resubmitted		5-17-85
902 KAR 10:110E	149	6-20-84	904 KAR 2:016E	159	6-20-84
Replaced	107	9-11-84	Replaced	82	8-7-84
902 KAR 12:060E	22	5-21-84	Resubmitted	950	10-19-84
Replaced	108	8-7-84	Replaced	860	12-11-84
902 KAR 12:070E	23	5-21-84	904 KAR 2:020E	955	10-19-84
Replaced	108	8-7-84	Replaced	865	12-11-84



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Emergency Regulation	11 Ky.R. Page No.	Effective Date	Emergency Regulation	11 Ky.R. Page No.	Effective Date
904 KAR 2:115E	393	7-20-84	904 KAR 6:040E	38	5-21-84
Repealed	957	10-19-84	Replaced		6-28-84
904 KAR 2:116E	957	10-19-84	904 KAR 6:050E	38	5-21-84
Replaced	916	12-11-84	Replaced		6-28-84
904 KAR 2:140E	29	5-16-84	905 KAR 1:150E	39	5-17-84
Replaced		6-28-84	Replaced		7-10-84
Resubmitted	163	7-11-84	905 KAR 1:170E	166	6-20-84
Replaced	298	9-11-84	Replaced	115	8-7-84
Resubmitted	959	10-19-84	905 KAR 1:180E	39	5-17-84
Replaced	867	12-11-84	Replaced	116	8-7-84
Resubmitted	1250	1-21-85	Resubmitted	544	8-27-84
Replaced	1209	3-12-85	Replaced	504	10-9-84
Resubmitted	1587	4-3-85	905 KAR 5:030E	166	6-20-84
904 KAR 2:150E	29	5-16-84	Replaced	116	8-7-84
Replaced		6-28-84	905 KAR 6:020E	40	5-17-84
Resubmitted	960	10-19-84	Replaced		6-28-84
Replaced	868	12-11-84	905 KAR 6:030E	40	5-17-84
Resubmitted	1251	1-21-85	Replaced	117	8-7-84
Replaced	1210	3-12-85	905 KAR 7:010E	41	5-21-84
Resubmitted	1588	4-3-85	Replaced		6-28-84
904 KAR 2:160E	30	5-16-84	905 KAR 7:020E	41	5-17-84
Replaced		6-28-84	Replaced	117	8-7-84
904 KAR 2:170E	30	5-16-84	905 KAR 7:030E	42	5-17-84
Replaced		6-28-84	Replaced		6-28-84
Resubmitted	961	10-19-84	Resubmitted	964	10-19-84
Replaced	868	12-11-84	Replaced	875	12-11-84
Resubmitted	1252	1-21-85	905 KAR 7:040E	42	5-21-84
Replaced	1211	3-12-85	Replaced		6-28-84
Resubmitted	1588	4-3-85	905 KAR 7:050E	167	6-20-84
904 KAR 2:180E	31	5-16-84	Replaced	117	8-7-84
Replaced		6-28-84	905 KAR 7:060E	44	5-21-84
Resubmitted	962	10-19-84	Replaced		6-28-84
Replaced	869	12-11-84	905 KAR 7:070E	44	5-21-84
904 KAR 2:190E	31	5-16-84	Replaced		6-28-84
Replaced		6-28-84	905 KAR 7:080E	45	5-17-84
Resubmitted	962	10-19-84	Replaced	118	8-7-84
Replaced	870	12-11-84	Resubmitted	545	8-27-84
904 KAR 2:200E	32	5-16-84	Replaced	505	10-9-84
Replaced		6-28-84	Resubmitted	967	10-19-84
Resubmitted	963	10-19-84	Replaced	877	12-11-84
Replaced	871	12-11-84	905 KAR 7:090E	167	6-20-84
904 KAR 3:035E	163	6-20-84	Replaced	118	8-7-84
Replaced	89	8-7-84	905 KAR 7:100E	969	10-19-84
Resubmitted	1253	2-12-85	Replaced	918	12-11-84
Replaced	1340	4-9-85	905 KAR 8:010E	46	5-16-84
904 KAR 3:050E	1254	2-12-85	Replaced		6-28-84
Replaced	1342	4-9-85	905 KAR 8:020E	546	8-27-84
904 KAR 3:090E	32	5-16-84	Replaced	376	9-11-84
Replaced		6-28-84	905 KAR 8:030E	46	5-16-84
Resubmitted	165	7-11-84	Replaced		6-28-84
Replaced	302	9-11-84	905 KAR 8:040E	47	5-16-84
Resubmitted	963	10-19-84	Replaced		6-28-84
Replaced	872	12-11-84	905 KAR 8:050E	47	5-16-84
Resubmitted	1255	1-21-85	Replaced		6-28-84
Replaced	1214	3-12-85	905 KAR 8:060E	48	5-16-84
Resubmitted	1589	4-3-85	Replaced	119	9-11-84
904 KAR 5:100E	33	5-21-84	905 KAR 8:070E	548	8-27-84
Replaced	196	7-10-84	Replaced	530	10-9-84
904 KAR 5:130E	34	5-21-84	905 KAR 8:080E	48	5-16-84
Replaced	197	7-10-84	Replaced		6-28-84
904 KAR 5:260E	36	5-21-84	905 KAR 8:110E	49	5-16-84
Replaced	304	7-10-84	Replaced		6-28-84
904 KAR 5:270E	165	7-6-84	905 KAR 8:120E	49	5-16-84
Replaced	375	9-11-84	Replaced	414	9-11-84
904 KAR 6:010E	36	5-21-84	905 KAR 8:130E	50	5-16-84
Replaced		6-28-84	Replaced		6-28-84
904 KAR 6:020E	37	5-21-84	906 KAR 1:010E	50	5-16-84
Replaced		6-28-84	Replaced	119	8-7-84
904 KAR 6:030E	37	5-21-84	906 KAR 1:020E	51	5-16-84
Replaced		6-28-84	Replaced	120	8-7-84

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Regulation	11 Ky.R. Page No.	Effective Date	Regulation	11 Ky.R. Page No.	Effective Date
1 KAR 1:010			107 KAR 1:040	665	11-13-84
Amended	169		109 KAR 9:010	93	8-7-84
1 KAR 3:005			115 KAR 2:020	306	
Amended	609		Amended	550	10-9-84
Withdrawn		11-13-84	200 KAR 5:308		
Amended	983	1-7-85	Amended	201	9-11-84
11 KAR 4:040	507	10-9-84	200 KAR 8:030	1095	2-12-85
11 KAR 4:050	1528	5-14-85	200 KAR 9:010		
11 KAR 5:020			Repealed	1	6-15-84
Amended	1056	2-12-85	201 KAR 1:030		
11 KAR 5:030			Amended	1430	5-14-85
Amended	1058	2-12-85	201 KAR 1:035		
11 KAR 5:060			Amended	1430	5-14-85
Amended	1059	2-12-85	201 KAR 1:040		
11 KAR 5:085			Amended	1431	5-14-85
Amended	1060	2-12-85	201 KAR 1:045		
11 KAR 6:010	508	10-9-84	Amended	1432	5-14-85
12 KAR 4:010			201 KAR 1:050		
Repealed	509	11-13-84	Amended	1433	5-14-85
12 KAR 4:020			201 KAR 1:065		
Repealed	509	11-13-84	Amended	1434	5-14-85
12 KAR 4:030			201 KAR 1:090		
Repealed	509	11-13-84	Amended	1434	5-14-85
12 KAR 4:040			201 KAR 1:095		
Repealed	509	11-13-84	Amended	1435	5-14-85
12 KAR 4:050			201 KAR 2:010		
Repealed	509	11-13-84	Amended	1436	
12 KAR 4:060			201 KAR 2:015		
Repealed	509	11-13-84	Amended	1612	
12 KAR 4:070			201 KAR 2:020		
Repealed	509	11-13-84	Amended	1614	
12 KAR 4:080	509	11-13-84	201 KAR 2:040		
12 KAR 4:090	510	11-13-84	Amended	1125	3-12-85
12 KAR 4:100	510	11-13-84	201 KAR 2:095		
12 KAR 4:110	511	11-13-84	Amended	1615	
12 KAR 4:120	512	11-13-84	201 KAR 2:100		
12 KAR 4:130	512	11-13-84	Amended	1615	
12 KAR 4:140	514	11-13-84	201 KAR 2:105		
12 KAR 4:150	515		Amended	1616	
Withdrawn		11-12-84	201 KAR 2:135		
12 KAR 4:160	516	11-13-84	Amended	986	1-7-85
12 KAR 4:170	516		201 KAR 2:190		
Amended	970	11-13-84	Amended	1126	3-12-85
12 KAR 5:020			201 KAR 3:005		
Amended	612	11-13-84	Amended	1436	5-14-85
12 KAR 5:030			201 KAR 3:015		
Amended	613	11-13-84	Amended	1437	5-14-85
12 KAR 5:040			201 KAR 6:010		
Amended	615	11-13-84	Amended	987	1-7-85
13 KAR 2:020	1689		201 KAR 9:018	1097	
13 KAR 2:030	1691		Amended	1256	2-12-85
15 KAR 1:010			201 KAR 9:020		
Amended	1061	2-12-85	Repealed	123	7-12-84
40 KAR 2:010			201 KAR 9:021	309	
Amended	52	7-1-84	Amended	553	10-9-84
40 KAR 3:010	1006	1-7-85	Amended	1063	
101 KAR 1:070			Amended	1257	2-12-85
Amended	1787		201 KAR 9:023	311	10-9-84
101 KAR 1:090			201 KAR 9:024	311	10-9-84
Amended	1789		201 KAR 9:025	312	10-9-84
105 KAR 1:010			201 KAR 9:030		
Amended	53	8-7-84	Repealed	553	10-9-84
Amended	1609		201 KAR 9:031	313	10-9-84
105 KAR 1:080			Amended	1617	
Amended	616	11-13-84	201 KAR 9:040		
106 KAR 1:020			Repealed	553	10-9-84
Amended	617	11-13-84	201 KAR 9:041	314	
106 KAR 1:040	879		Amended	554	10-9-84
Amended	1022	12-11-84	Amended	1619	
			201 KAR 9:050		
			Repealed	553	10-9-84



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Regulation	11 Ky.R. Page No.	Effective Date	Regulation	11 Ky.R. Page No.	Effective Date
201 KAR 9:051	314		201 KAR 20:210		
Amended	555	10-9-84	Amended	989	1-7-85
201 KAR 9:060			201 KAR 20:215		
Repealed	123	7-12-84	Amended	1630	
201 KAR 9:061	315		201 KAR 20:220		
Amended	556	10-9-84	Amended	990	1-7-85
201 KAR 9:070			201 KAR 20:225		
Repealed	553	10-9-84	Amended	1631	
201 KAR 9:071	316	10-9-84	201 KAR 20:230		
201 KAR 9:080			Amended	1632	
Repealed	123	7-12-84	201 KAR 20:240		
201 KAR 9:081	317		Amended	1633	
Amended	557	10-9-84	201 KAR 20:250	1695	
201 KAR 9:082	320	10-9-84	201 KAR 20:260	1696	
201 KAR 9:085			201 KAR 20:270	1698	
Repealed	123	7-12-84	201 KAR 20:280	1699	
201 KAR 11:180	1215		201 KAR 20:290	1701	
Amended	1368	3-12-85	201 KAR 20:300	1703	
201 KAR 12:010			201 KAR 20:310	1704	
Amended	1437	5-14-85	201 KAR 20:320	1705	
201 KAR 12:020			201 KAR 20:330	1706	
Amended	1438	5-14-85	201 KAR 20:340	1707	
201 KAR 12:031			201 KAR 20:350	1708	
Amended	1439	5-14-85	201 KAR 20:360	1709	
201 KAR 12:040			201 KAR 22:010		
Amended	1439	5-14-85	Amended	734	12-11-84
201 KAR 12:060			201 KAR 22:020		
Amended	1440	5-14-85	Amended	735	12-11-84
201 KAR 12:082			201 KAR 22:031		
Amended	1441	5-14-85	Amended	415	10-9-84
201 KAR 12:101			201 KAR 22:040		
Amended	1443	5-14-85	Amended	417	10-9-84
201 KAR 12:125			201 KAR 22:052		
Amended	1619		Amended	417	10-9-84
201 KAR 12:150			201 KAR 22:070		
Amended	1444	5-14-85	Amended	419	10-9-84
Amended	1791		201 KAR 22:106		
201 KAR 13:040			Amended	420	10-9-84
Amended	55	8-7-84	201 KAR 22:110		
Amended	732	12-11-84	Amended	422	10-9-84
201 KAR 13:050			201 KAR 23:030		
Amended	56	8-7-84	Amended	201	9-11-84
Amended	733	12-11-84	201 KAR 23:120	1710	
201 KAR 14:170	1948		201 KAR 23:130	1711	
201 KAR 16:010			201 KAR 25:011		
Amended	1272		Amended	1448	5-14-85
Withdrawn		4-5-85	201 KAR 25:021		
201 KAR 19:035			Amended	1449	5-14-85
Amended	1273	4-9-85	301 KAR 1:016		
201 KAR 19:095			Amended	1126	3-12-85
Amended	1276	4-9-85	301 KAR 1:055		
201 KAR 20:056			Amended	1065	2-12-85
Amended	1445	5-14-85	301 KAR 1:075		
201 KAR 20:057			Amended	619	11-13-84
Amended	1447	5-14-85	301 KAR 1:082		
201 KAR 20:070			Amended	1127	3-12-85
Amended	1621		301 KAR 1:140		
201 KAR 20:085			Amended	620	11-13-84
Amended	1623		301 KAR 1:160	1217	3-12-85
201 KAR 20:090			301 KAR 2:044		
Amended	1623		Amended	422	10-9-84
201 KAR 20:095			301 KAR 2:045		
Amended	1624		Amended	1635	
201 KAR 20:110			301 KAR 2:047		
Amended	1626		Amended	1637	
201 KAR 20:161	1694		301 KAR 2:050		
201 KAR 20:200			Amended	735	12-11-84
Amended	1627		301 KAR 2:055		
201 KAR 20:205			Repealed	693	10-9-84
Amended	1628		301 KAR 2:071		
			Repealed	321	9-11-84

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Regulation	11 Ky.R. Page No.	Effective Date	Regulation	11 Ky.R. Page No.	Effective Date
301 KAR 2:088			401 KAR 5:060		
Repealed	693	10-9-84	Amended	756	1-7-85
301 KAR 2:140			401 KAR 5:065		
Amended	991	1-7-85	Amended	765	1-7-85
301 KAR 2:170			401 KAR 5:070		
Amended	1640		Amended	773	1-7-85
301 KAR 2:180	666	11-13-84	401 KAR 5:200		
301 KAR 2:190	321	9-11-84	Amended	177	8-7-84
301 KAR 2:200	880	12-11-84	Amended	1066	3-12-85
301 KAR 3:070			401 KAR 6:040		
Repealed	693	10-9-84	Amended	1068	
302 KAR 16:010	94		Amended	1262	3-12-85
Amended	399	9-11-84	401 KAR 6:200		
302 KAR 16:020	94		Amended	178	8-7-84
Amended	400	9-11-84	401 KAR 6:300	1949	
Amended	1644		401 KAR 6:310	1950	
302 KAR 16:030	95		401 KAR 30:010		
Amended	401	9-11-84	Amended	202	10-9-84
302 KAR 16:040	324	9-11-84	401 KAR 30:070		
302 KAR 16:050	324	9-11-84	Amended	179	8-7-84
302 KAR 16:060	1711		Amended	1278	5-14-85
302 KAR 20:040			401 KAR 31:040		
Amended	1645		Amended	210	
302 KAR 20:055	1712		Amended	560	10-9-84
302 KAR 20:065			401 KAR 31:160		
Amended	1648		Amended	220	10-9-84
302 KAR 20:070			401 KAR 31:170		
Amended	1650		Amended	222	10-9-84
302 KAR 20:150	95		401 KAR 32:020		
Amended	401	9-11-84	Amended	226	10-9-84
302 KAR 20:160	95		401 KAR 32:050		
Amended	402		Amended	227	10-9-84
Withdrawn		12-10-84	401 KAR 32:100	326	
302 KAR 20:170	325		Amended	568	10-9-84
Withdrawn		12-10-84	401 KAR 47:020		
302 KAR 20:180	1343	4-9-85	Amended	1279	5-14-85
302 KAR 20:190	1713		401 KAR 47:050		
302 KAR 31:025			Amended		
Amended	1653		Amended	1282	
302 KAR 34:010	96		Amended	1590	5-14-85
Amended	402	10-9-84	401 KAR 49:010		
302 KAR 34:020	1006	1-7-85	Amended	56	9-11-84
302 KAR 34:030	1713		401 KAR 49:020		
400 KAR 2:010			Amended	58	9-11-84
Amended	171	8-7-84	401 KAR 49:030		
400 KAR 2:030			Amended	61	
Amended	172	8-7-84	Amended	403	9-11-84
400 KAR 2:040			401 KAR 49:040	96	9-11-84
Amended	173	8-7-84	401 KAR 50:015		
400 KAR 2:050			Amended	776	
Amended	176	8-7-84	Amended	1045	1-7-85
401 KAR 4:200			Amended	1450	
Amended	176	8-7-84	401 KAR 50:016		
401 KAR 5:010			Amended	179	8-7-84
Amended	1128	4-9-85	Amended	1454	
401 KAR 5:026			Amended	1780	
Amended	424		401 KAR 57:010		
Amended	703	11-13-84	Repealed	885	1-7-85
Amended	1132		401 KAR 57:011	885	1-7-85
Amended	1372	4-9-85	401 KAR 57:035	887	1-7-85
401 KAR 5:029			Amended	1458	
Amended	1141		401 KAR 57:040	888	1-7-85
Amended	1380	4-9-85	Amended	1459	
401 KAR 5:031			401 KAR 59:019	1529	
Amended	1144		401 KAR 59:035		
Amended	1384	4-9-85	Repealed	889	1-7-85
401 KAR 5:050			401 KAR 59:036	889	1-7-85
Amended	737	1-7-85	401 KAR 59:048		
401 KAR 5:055			Repealed	890	1-7-85
Amended	740		401 KAR 59:049	890	1-7-85
Amended	1028	1-7-85	401 KAR 59:061	1531	
			401 KAR 59:099	891	1-7-85



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Regulation	11 Ky.R. Page No.	Effective Date	Regulation	11 Ky.R. Page No.	Effective Date
401 KAR 59:100			405 KAR 16:020		
Repealed	891	1-7-85	Amended	237	
401 KAR 59:130			Amended	578	10-9-84
Repealed	893	1-7-85	405 KAR 16:050		
401 KAR 59:131	893	1-7-85	Amended	1837	
401 KAR 59:135			405 KAR 16:110		
Repealed	894	1-7-85	Amended	1840	
401 KAR 59:136	894	1-7-85	405 KAR 16:120		
401 KAR 59:140			Amended	1290	
Repealed	895	1-7-85	Amended	1598	5-14-85
401 KAR 59:141	895	1-7-85	405 KAR 16:130		
401 KAR 59:145			Amended	1842	
Repealed	896	1-7-85	405 KAR 16:170		
401 KAR 59:146	896	1-7-85	Amended	1850	
401 KAR 59:170			405 KAR 18:050		
Repealed	897	1-7-85	Amended	1851	
401 KAR 59:171	897	1-7-85	405 KAR 18:110		
401 KAR 59:181	1532		Amended	1854	
401 KAR 59:195			405 KAR 18:120		
Repealed	899	1-7-85	Amended	1296	
401 KAR 59:196	899	1-7-85	Amended	1603	5-14-85
401 KAR 59:200			405 KAR 18:130		
Repealed	900	1-7-85	Amended	1856	
401 KAR 59:201	900	1-7-85	405 KAR 18:170		
401 KAR 59:212			Amended	1864	
Amended	779	1-7-85	405 KAR 20:030		
401 KAR 59:213	901	1-7-85	Amended	1865	
401 KAR 59:215			410 KAR 1:010	1218	
Repealed	902	1-7-85	Amended	1404	4-9-85
401 KAR 59:216	902	1-7-85	410 KAR 1:020	1222	4-9-85
401 KAR 59:220			501 KAR 6:010		
Repealed	903	1-7-85	Amended	782	12-11-84
401 KAR 59:221	903	1-7-85	502 KAR 30:010	1714	
401 KAR 59:251	1534		502 KAR 30:020	1715	
401 KAR 59:275	905	1-7-85	502 KAR 30:030	1716	
401 KAR 59:280	906	1-7-85	502 KAR 30:040	1717	
401 KAR 59:285	1536		502 KAR 30:050	1717	
401 KAR 59:300	907	1-7-85	502 KAR 30:060	1719	
401 KAR 59:305	908	1-7-85	502 KAR 30:070	1720	
401 KAR 61:165			503 KAR 1:010		
Amended		10-1-84	Repealed	1537	5-14-85
Amended	1461		503 KAR 1:020		
401 KAR 100:020	667		Repealed	1537	5-14-85
Withdrawn		11-13-84	503 KAR 1:030		
402 KAR 3:010	669	11-13-84	Repealed	1537	5-14-85
402 KAR 4:030			503 KAR 1:040		
Amended	1073	2-12-85	Repealed	1537	5-14-85
402 KAR 4:190			503 KAR 1:050		
Amended	1158	4-9-85	Repealed	1537	5-14-85
405 KAR 7:020			503 KAR 1:060	1537	5-14-85
Amended	228	10-9-84	503 KAR 1:070	1538	5-14-85
Amended	1791		503 KAR 1:080	1539	5-14-85
405 KAR 7:030			503 KAR 1:090	1540	
Amended	235		Amended	1775	5-14-85
Amended	576	10-9-84	503 KAR 1:100	1541	
405 KAR 7:070	1345		Amended	1775	5-14-85
Amended	1596	5-14-85	503 KAR 1:110	1542	
405 KAR 7:080			Amended	1776	5-14-85
Amended	1800		503 KAR 1:120	1543	
405 KAR 8:030			Amended	1777	5-14-85
Amended	1803		503 KAR 1:130	1544	5-14-85
405 KAR 8:040			503 KAR 5:010		
Amended	1816		Repealed		5-14-85
405 KAR 10:035	331		503 KAR 5:020		5-14-85
Amended	577	10-9-84	Repealed		5-14-85
405 KAR 12:010			503 KAR 5:030		5-14-85
Amended	1831		Repealed		5-14-85
405 KAR 12:020			503 KAR 5:040		5-14-85
Amended	1833		Repealed		5-14-85



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Regulation	11 Ky.R. Page No.	Effective Date	Regulation	11 Ky.R. Page No.	Effective Date
503 KAR 5:050			603 KAR 5:010		
Repealed		5-14-85	Repealed	1363	2-26-85
503 KAR 5:060			603 KAR 5:030		
Repealed		5-14-85	Amended	994	1-7-85
503 KAR 5:070			603 KAR 5:050		
Repealed		5-14-85	Amended	1159	3-12-85
503 KAR 5:080	1545		Amended	1660	
Amended	1778	5-14-85	603 KAR 5:060		
503 KAR 5:090	1546	5-14-85	Repealed	1369	3-12-85
503 KAR 5:100	1548		603 KAR 5:061	1223	
Amended	1779	5-14-85	Amended	1369	3-12-85
503 KAR 5:110	1550		603 KAR 5:096		
Amended	1780	5-14-85	Amended	1872	
503 KAR 5:120	1550	5-14-85	603 KAR 5:120	1225	3-12-85
600 KAR 1:030	517	10-9-84	603 KAR 5:130	345	
600 KAR 1:040	518		Withdrawn		8-27-84
Amended	726		603 KAR 5:140	670	
Amended	970	11-13-84	Withdrawn		11-14-84
Amended	1867		603 KAR 5:150	1100	3-12-85
600 KAR 1:050	520		603 KAR 5:160	1101	
Amended	728		Withdrawn		1-23-85
Amended	973	11-13-84	603 KAR 7:020	346	9-11-84
600 KAR 1:060	523		603 KAR 7:030	347	9-11-84
Withdrawn		11-12-84	603 KAR 7:040	348	9-11-84
600 KAR 1:070	523	10-9-84	603 KAR 7:050	349	9-11-84
Amended	1074	2-12-85	603 KAR 7:060	349	9-11-84
600 KAR 2:010	1097	3-12-85	603 KAR 7:070	350	9-11-84
600 KAR 2:020	1098	3-12-85	603 KAR 8:010	1103	3-12-85
600 KAR 2:030	1099	3-12-85	605 KAR 1:030		
600 KAR 2:040	909	12-11-84	Amended	1463	5-14-85
601 KAR 1:015	332	9-11-84	605 KAR 1:150	524	10-9-84
601 KAR 1:020			701 KAR 5:060	1105	
Amended	1657		Amended	1267	3-12-85
601 KAR 1:025			702 KAR 1:005		
Amended	1658		Amended	180	8-7-84
601 KAR 1:130	334		702 KAR 1:115	351	9-11-84
Withdrawn		9-5-84	702 KAR 1:120	671	11-13-84
601 KAR 9:010			702 KAR 3:090		
Amended	1659		Amended	1874	
601 KAR 9:011	335	9-11-84	702 KAR 3:100		
601 KAR 9:013			Amended	249	9-11-84
Amended	240	9-11-84	702 KAR 3:190	352	
601 KAR 9:047			Amended	591	10-9-84
Amended	1659		702 KAR 4:020		
601 KAR 9:074			Amended	1465	5-14-85
Amended	241		702 KAR 4:030		
Amended	581	10-9-84	Amended	249	
601 KAR 13:040	335	9-11-84	Withdrawn		10-5-84
601 KAR 13:050	337		Amended	1467	5-14-85
Amended	584		702 KAR 4:050		
Amended	699	10-9-84	Amended	1160	3-12-85
601 KAR 35:010	338		702 KAR 5:010		
Withdrawn		9-5-84	Amended	1875	
601 KAR 35:020	339		702 KAR 5:030		
Amended	585	10-9-84	Amended	1876	
601 KAR 35:040	341		702 KAR 5:080		
Amended	587	10-9-84	Amended	1877	
601 KAR 35:050	343		702 KAR 5:130	1551	
Amended	587	10-9-84	Amended	1781	
602 KAR 15:010			702 KAR 7:010		
Amended	244	9-11-84	Amended	1880	
Amended	1074	2-12-85	702 KAR 7:020		
602 KAR 15:020	344		Amended	1881	
Amended	549	9-11-84	702 KAR 7:030		
603 KAR 2:015			Amended	1161	3-12-85
Amended	1869		Amended	1882	
603 KAR 3:051			702 KAR 7:070		
Amended	450	10-9-84	Amended	1467	5-14-85
603 KAR 4:035			702 KAR 7:080	1553	5-14-85
Amended	246		702 KAR 7:090	1968	
Amended	588	10-9-84			

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Regulation	11 Ky.R. Page No.	Effective Date	Regulation	11 Ky.R. Page No.	Effective Date
703 KAR 1:090	671		704 KAR 20:051		
Withdrawn		12-5-84	Repealed	625	11-13-84
703 KAR 2:010			704 KAR 20:060		
Amended	250	10-9-84	Amended	628	11-13-84
Recodified		10-9-84	704 KAR 20:065		
703 KAR 2:050			Amended	629	11-13-84
Amended	185	8-7-84	704 KAR 20:070		
Recodified		10-5-84	Amended	255	9-11-84
704 KAR 3:005			Amended	630	11-13-84
Amended	622		704 KAR 20:076		
Amended	977		Amended	255	9-11-84
Amended	1023	12-11-84	Amended	1479	5-14-85
Amended	1469	5-14-85	704 KAR 20:078		
704 KAR 3:035			Amended	256	9-11-84
Amended	251	9-11-84	Amended	1480	5-14-85
Amended	1472	5-14-85	704 KAR 20:080		
704 KAR 3:052			Amended	257	9-11-84
Repealed	1554	5-14-85	Amended	631	11-13-84
704 KAR 3:290			Amended	1481	5-14-85
Amended	1473	5-14-85	704 KAR 20:085		
704 KAR 3:292			Amended	632	11-13-84
Amended	1473	5-14-85	704 KAR 20:090		
704 KAR 3:295			Amended	258	10-9-84
Repealed	1554	5-14-85	Amended	633	11-13-84
704 KAR 3:304			704 KAR 20:120		
Amended	252		Amended	634	12-11-84
Amended	591	10-9-84	704 KAR 20:145		
Amended	1883		Amended	635	11-13-84
704 KAR 3:305			704 KAR 20:150		
Amended	1076	3-12-85	Amended	636	11-13-84
704 KAR 3:320	353	10-9-84	704 KAR 20:159		
Amended	1077	2-12-85	Amended	637	11-13-84
704 KAR 3:325	355		704 KAR 20:210		
Amended	591	10-9-84	Amended	637	
Amended	1474	5-14-85	Amended	980	12-11-84
704 KAR 3:335			Amended	1481	5-14-85
Amended	1884		704 KAR 20:222		
704 KAR 3:340	1105		Amended	638	11-13-84
Amended	1267	3-12-85	704 KAR 20:230		
704 KAR 3:345	1107		Amended	640	11-13-84
Amended	1268	3-12-85	704 KAR 20:235		
704 KAR 3:350	1554	5-14-85	Amended	641	11-13-84
704 KAR 3:355	1227		Amended	1888	
Amended	1407	4-9-85	704 KAR 20:240		
704 KAR 4:010			Amended	643	11-13-84
Amended	1885		704 KAR 20:245		
704 KAR 5:050			Amended	644	11-13-84
Amended	1476	5-14-85	704 KAR 20:270		
704 KAR 6:010			Amended	645	11-13-84
Repealed	1108	2-12-85	704 KAR 20:285		
704 KAR 6:011	1108	2-12-85	Amended	259	9-11-84
704 KAR 7:050	1109		704 KAR 20:290	356	9-11-84
Amended	1270	3-12-85	704 KAR 20:300	357	9-11-84
704 KAR 7:060	1110	2-12-85	704 KAR 20:305	672	12-11-84
704 KAR 10:022			704 KAR 20:310	1230	3-12-85
Amended	253	10-9-84	704 KAR 20:320	1554	
Amended	1078	2-12-85	Amended	1783	
Amended	1885		705 KAR 1:010		
704 KAR 15:080			Amended	1890	
Amended	1887		705 KAR 2:030		
704 KAR 15:090			Amended	1026	12-11-84
Amended	1162	4-9-85	705 KAR 4:010		
704 KAR 20:005			Reprint	379	6-28-84
Amended	254	10-9-84	Amended	646	11-13-84
Amended	1888		705 KAR 4:205	358	9-11-84
704 KAR 20:035			705 KAR 7:070	359	
Amended	624	11-13-84	Amended	593	10-9-84
704 KAR 20:045			Recodified		11-26-84
Amended	625	11-13-84			
704 KAR 20:050					
Amended	627	11-13-84			



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Regulation	11 Ky.R. Page No.	Effective Date	Regulation	11 Ky.R. Page No.	Effective Date
706 KAR 1:010			806 KAR 6:060	678	11-13-84
Amended	260		806 KAR 6:070	679	11-13-84
Amended	594		806 KAR 6:080	681	11-13-84
Amended	700	10-9-84	806 KAR 9:180	1111	2-12-85
706 KAR 1:020			806 KAR 12:090	100	8-7-84
Amended	1890		806 KAR 12:100	362	
707 KAR 1:051			Withdrawn		9-4-84
Amended	186	8-7-84	806 KAR 12:110	683	11-13-84
707 KAR 1:055			806 KAR 14:080		
Amended	194	8-7-84	Repealed	675	11-13-84
709 KAR 1:050			806 KAR 15:010		
Amended	1483	5-14-85	Amended	261	
709 KAR 1:060			Amended	595	10-9-84
Amended	1483	5-14-85	806 KAR 15:030	364	
709 KAR 1:070			Amended	600	10-9-84
Amended	1891		806 KAR 38:020		
803 KAR 2:020			Amended	1079	2-12-85
Amended	64	8-7-84	806 KAR 39:070	685	
Amended	1484	5-14-85	Amended	975	11-13-84
803 KAR 2:030			Amended	1661	
Amended	1489	5-14-85	806 KAR 43:010		
804 KAR 1:100			Amended	650	11-13-84
Amended	994	1-7-85	807 KAR 5:001		
804 KAR 1:110	97	8-7-84	Amended	1301	
804 KAR 1:120	910	1-7-85	807 KAR 5:006		
804 KAR 2:005			Amended	790	
Amended	67	8-7-84	Amended	1048	1-7-85
804 KAR 4:240	98	8-7-84	807 KAR 5:011		
804 KAR 4:250	360	9-11-84	Amended	69	8-7-84
Amended	1893		808 KAR 3:050		
804 KAR 4:260	675	11-13-84	Amended	266	9-11-84
804 KAR 4:270	1007		808 KAR 10:010		
Amended	1124	2-12-85	Amended	1903	
804 KAR 7:045			808 KAR 10:020		
Amended	68	8-7-84	Amended	1904	
804 KAR 9:050	361	9-11-84	808 KAR 10:060		
804 KAR 11:030	1968		Amended	1908	
805 KAR 1:030			808 KAR 10:090		
Amended	1894		Amended	1909	
805 KAR 1:110			808 KAR 10:120		
Amended	406	9-1-84	Amended	1909	
805 KAR 3:020			808 KAR 10:130		
Amended	1895		Amended	1910	
805 KAR 4:087			808 KAR 10:140		
Amended	788	12-11-84	Amended	1911	
805 KAR 4:110			808 KAR 10:150		
Amended	789	12-11-84	Amended	1912	
805 KAR 5:020	1722		808 KAR 10:170		
805 KAR 7:010			Amended	1914	
Amended	1896		808 KAR 10:190		
805 KAR 7:020			Amended	1916	
Amended	1897		808 KAR 10:210	1969	
805 KAR 7:030			808 KAR 11:010		
Amended	1898		Amended	168	6-28-84
805 KAR 7:040			810 KAR 1:009		
Amended	1899		Amended	452	11-13-84
805 KAR 7:050			811 KAR 1:032		
Amended	1900		Repealed	1233	3-12-85
805 KAR 7:060			811 KAR 1:070		
Amended	1901		Amended	798	12-11-84
805 KAR 7:070			811 KAR 1:090		
Amended	1902		Amended	455	10-9-84
806 KAR 2:090			811 KAR 1:105		
Amended	648	11-13-84	Amended	457	10-9-84
806 KAR 2:095			811 KAR 1:150		
Amended	649		Amended	458	10-9-84
Amended	981	12-11-84	Amended	800	12-11-84
806 KAR 2:096	675	11-13-84	811 KAR 1:160		
806 KAR 2:097	676		Amended	1165	3-12-85
Amended	982	12-11-84	811 KAR 1:195		
806 KAR 2:100	100	8-7-84	Amended	801	12-11-84

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Regulation	11 Ky.R. Page No.	Effective Date	Regulation	11 Ky.R. Page No.	Effective Date
811 KAR 1:200			902 KAR 8:020		
Repealed	1233	3-12-85	Amended	653	11-13-84
811 KAR 1:210	1008		Amended	806	12-11-84
Withdrawn		1-16-85	Amended	1080	2-12-85
811 KAR 1:215	1233	3-12-85	Amended	1166	3-12-85
812 KAR 1:020			Amended	1324	4-9-85
Amended	1495	5-14-85	Amended	1920	
812 KAR 1:030			902 KAR 8:030	106	8-7-84
Amended	1499	5-14-85	Amended	654	11-13-84
812 KAR 1:035			902 KAR 10:060		
Amended	1501	5-14-85	Amended	1665	
812 KAR 1:050			902 KAR 10:080		
Amended	1505		Amended	409	9-1-84
812 KAR 1:060			902 KAR 10:085	1556	5-14-85
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	704 KAR 20:150	161.115	704 KAR 20:285
	704 KAR 20:159	161.124	704 KAR 20:035
	704 KAR 20:210	161.200	702 KAR 7:050
	704 KAR 20:222	162.010	702 KAR 4:050
	704 KAR 20:230	162.060	702 KAR 4:020
	704 KAR 20:235		702 KAR 4:050
	704 KAR 20:240	163.020	705 KAR 1:010
	704 KAR 20:245		705 KAR 4:010
	704 KAR 20:270	163.030	705 KAR 1:010
	704 KAR 20:285		705 KAR 4:010
	704 KAR 20:290		709 KAR 1:060
	704 KAR 20:300		709 KAR 1:070
		163.087	705 KAR 4:010



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KRS Section	Regulation	KRS Section	Regulation
163.140	706 KAR 1:010	186.560	601 KAR 13:050
	706 KAR 1:020	186A.040	806 KAR 39:070
163.160	706 KAR 1:010	Chapter 189	200 KAR 8:030
164.020	13 KAR 2:020	189.221	601 KAR 1:020
	13 KAR 2:030	189.222	601 KAR 1:020
164.740-164.764	11 KAR 5:020		603 KAR 5:096
	11 KAR 5:030	189.270	601 KAR 1:015
	11 KAR 5:060	189.271	601 KAR 1:020
	11 KAR 5:085	189.337	603 KAR 5:050
164.740	11 KAR 4:040	189.338	603 KAR 5:030
164.744	11 KAR 6:010	189.540	702 KAR 5:010
164.748	11 KAR 4:040		702 KAR 5:030
	11 KAR 6:010		702 KAR 5:080
164.749-164.785	11 KAR 4:050	189A.040	601 KAR 13:050
164.753	11 KAR 6:010	189A.070	601 KAR 13:050
164.780	11 KAR 5:020	190.010-190.080	605 KAR 1:030
	11 KAR 5:030		605 KAR 1:150
	11 KAR 5:060	Chapter 194	902 KAR 17:010
	11 KAR 5:085	194.025	900 KAR 1:011
164.785	11 KAR 5:020		902 KAR 17:020
	11 KAR 5:030	194.030	900 KAR 1:011
	11 KAR 5:060		900 KAR 1:030
	11 KAR 5:085		902 KAR 16:010
164A.060	15 KAR 1:010		903 KAR 6:010
Chapter 174	600 KAR 2:040		903 KAR 6:020
174.080	600 KAR 1:040		903 KAR 6:040
	600 KAR 1:050		903 KAR 6:050
174.410	601 KAR 1:025		904 KAR 1:250
174.430	601 KAR 1:025		904 KAR 2:140
175.450	600 KAR 2:010		904 KAR 2:150
	600 KAR 2:020		904 KAR 2:180
	600 KAR 2:030		904 KAR 2:190
175.470	603 KAR 5:120		904 KAR 2:200
	600 KAR 2:010		904 KAR 3:090
	600 KAR 2:020		905 KAR 1:180
	600 KAR 2:030		906 KAR 1:010
175.520	600 KAR 2:010		906 KAR 1:020
	600 KAR 2:020	194.040	900 KAR 1:011
	600 KAR 2:030	194.050	900 KAR 1:011
176.050	603 KAR 5:120		902 KAR 4:060
	603 KAR 5:150		902 KAR 17:020
	603 KAR 7:060		904 KAR 2:110
	603 KAR 7:070		904 KAR 2:116
176.130-176.220	603 KAR 2:015		904 KAR 3:020
176.240	603 KAR 7:060		904 KAR 3:035
	603 KAR 7:070		904 KAR 3:045
177.106	603 KAR 5:120		904 KAR 3:050
	603 KAR 5:150	194.060	905 KAR 1:180
177.230	603 KAR 5:120	Chapter 196	501 KAR 6:010
177.240	603 KAR 5:120	Chapter 197	501 KAR 6:010
177.410	603 KAR 5:120	Chapter 198B	815 KAR 7:010
177.440	603 KAR 5:120		815 KAR 7:020
177.830-177.890	603 KAR 4:035		815 KAR 7:080
177.905-177.950	603 KAR 3:051	198B.400-198B.540	815 KAR 4:010
177.972	601 KAR 35:020	199.011-199.375	905 KAR 1:180
177.976	601 KAR 35:020	199.420-199.990	905 KAR 1:180
177.977	601 KAR 35:020	200.080-200.120	905 KAR 1:180
177.979	601 KAR 35:020	200.460-200.490	902 KAR 4:070
	601 KAR 35:040	Chapter 202A	905 KAR 7:030
177.980	601 KAR 35:040		905 KAR 7:080
183.120	602 KAR 15:020		905 KAR 7:100
183.200-183.213	602 KAR 15:010	Chapter 205	904 KAR 2:140
183.505	602 KAR 15:020	205.010	904 KAR 2:006
183.764	602 KAR 15:020	205.200	902 KAR 16:010
Chapter 186	601 KAR 9:010		904 KAR 2:006
186.021	806 KAR 39:070		904 KAR 2:016
186.042	601 KAR 9:011		904 KAR 2:150
186.057	601 KAR 35:020	205.201	905 KAR 8:060
	601 KAR 35:050		905 KAR 8:070
186.115	601 KAR 9:047	205.201-205.204	905 KAR 1:180
186A.115	601 KAR 9:047		905 KAR 8:020
186.173	601 KAR 9:013		

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KRS Section	Regulation	KRS Section	Regulation
205.204	905 KAR 8:060	211.960-211.968	902 KAR 13:050
205.210	905 KAR 8:070	211.964	902 KAR 13:100
205.220	904 KAR 2:016	211.990	902 KAR 10:080
	904 KAR 2:050		902 KAR 10:085
205.231	904 KAR 2:150		902 KAR 10:110
	904 KAR 2:055		902 KAR 13:050
205.245	904 KAR 2:150		902 KAR 100:012
	902 KAR 16:010	211.994	902 KAR 4:090
	904 KAR 2:015	Chapter 212	902 KAR 8:020
205.455-205.465	905 KAR 1:180	212.170	902 KAR 8:030
	905 KAR 8:020	212.210	902 KAR 45:150
	905 KAR 8:120	212.870	902 KAR 8:030
205.510-205.630	107 KAR 1:040	212.990	902 KAR 45:150
205.520	902 KAR 16:010	Chapter 213	901 KAR 5:050
	904 KAR 1:004	213.190	905 KAR 1:170
	904 KAR 1:009	214.010	902 KAR 2:020
	904 KAR 1:011		902 KAR 2:080
	904 KAR 1:013	214.155	902 KAR 4:030
	904 KAR 1:014	214.160	902 KAR 2:080
	904 KAR 1:022	214.170	902 KAR 2:080
	904 KAR 1:024	214.185	902 KAR 2:080
	904 KAR 1:036		902 KAR 4:050
	904 KAR 1:039	215.520-215.600	902 KAR 20:200
	904 KAR 1:045	Chapter 216A	201 KAR 6:010
	904 KAR 1:055	Chapter 216B	40 KAR 3:010
	904 KAR 1:061		902 KAR 17:010
	904 KAR 1:110	216B.010-216B.130	902 KAR 20:006
	904 KAR 1:180		902 KAR 20:008
	904 KAR 1:190		902 KAR 20:016
	904 KAR 1:250		902 KAR 20:026
	904 KAR 1:260		902 KAR 20:036
	904 KAR 1:270		902 KAR 20:048
	904 KAR 1:280		902 KAR 20:051
205.550	904 KAR 1:020		902 KAR 20:066
205.560	904 KAR 1:020		902 KAR 20:086
	904 KAR 1:110	216B.010-216B.131	902 KAR 20:041
205.795	904 KAR 2:020		902 KAR 20:132
	904 KAR 2:170		902 KAR 20:160
Chapter 208	905 KAR 1:180		902 KAR 20:190
	905 KAR 7:030		902 KAR 20:200
	905 KAR 7:050	216B.015	902 KAR 17:020
	905 KAR 7:080	216B.990	902 KAR 20:006
208.400	905 KAR 7:020		902 KAR 20:008
208.410	905 KAR 7:020		902 KAR 20:016
	905 KAR 7:100		902 KAR 20:026
208.530	905 KAR 7:020		902 KAR 20:036
Chapter 209	905 KAR 1:180		902 KAR 20:041
209.030	905 KAR 5:010		902 KAR 20:048
	905 KAR 5:030		902 KAR 20:051
209.160	905 KAR 5:010		902 KAR 20:066
Chapter 210	902 KAR 12:080		902 KAR 20:086
210.290	900 KAR 1:040		902 KAR 20:132
210.370-210.460	902 KAR 6:060		902 KAR 20:160
210.700-210.760	902 KAR 12:060		902 KAR 20:190
	902 KAR 12:070		902 KAR 20:200
	905 KAR 7:090	Chapter 217	201 KAR 2:135
211.090	902 KAR 4:015		201 KAR 2:190
211.170	902 KAR 8:030	217.005-217.215	902 KAR 45:130
211.180	902 KAR 2:020		902 KAR 45:140
	902 KAR 2:080		902 KAR 50:090
	902 KAR 4:015	217.808-217.812	902 KAR 45:140
	902 KAR 4:050	217.992	902 KAR 45:130
	902 KAR 4:060		902 KAR 45:140
	902 KAR 4:080		902 KAR 50:090
	902 KAR 45:150	Chapter 217B	302 KAR 31:025
211.350	902 KAR 10:060	217C.010-217C.990	902 KAR 50:010
211.350-211.380	902 KAR 10:080		902 KAR 50:070
	902 KAR 10:085		902 KAR 50:100
	902 KAR 10:110		902 KAR 50:110
211.840-211.852	902 KAR 100:012	Chapter 218A	902 KAR 55:010
211.900	902 KAR 4:090		902 KAR 55:015
211.905	902 KAR 4:090		902 KAR 55:020



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KRS Section	Regulation	KRS Section	Regulation
Chapter 218A (cont'd)	902 KAR 55:025	224.2215	410 KAR 1:010
	902 KAR 55:030		410 KAR 1:020
	902 KAR 55:040	224.320	401 KAR 50:015
	902 KAR 55:045		401 KAR 50:016
	902 KAR 55:060		401 KAR 57:011
219.011-219.081	902 KAR 45:005		401 KAR 57:035
	902 KAR 45:140		401 KAR 57:040
219.991	902 KAR 45:005		401 KAR 59:019
222.210	902 KAR 20:086		401 KAR 59:036
Chapter 223	401 KAR 6:040		401 KAR 59:049
223.170	401 KAR 6:200		401 KAR 59:061
223.180	401 KAR 6:200		401 KAR 59:099
223.190	401 KAR 6:200		401 KAR 59:131
223.210	401 KAR 6:200		401 KAR 59:136
223.400-223.460	401 KAR 6:300		401 KAR 59:141
	401 KAR 6:310		401 KAR 59:146
223.991	401 KAR 6:300		401 KAR 59:171
	401 KAR 6:310		401 KAR 59:181
Chapter 224	401 KAR 5:029		401 KAR 59:196
	401 KAR 5:031		401 KAR 59:201
	401 KAR 5:050		401 KAR 59:213
	401 KAR 5:055		401 KAR 59:216
	401 KAR 5:060		401 KAR 59:221
	401 KAR 5:065		401 KAR 59:251
	401 KAR 5:070		401 KAR 59:275
	401 KAR 50:015		401 KAR 59:280
	401 KAR 59:212		401 KAR 59:285
	401 KAR 61:165		401 KAR 59:300
224.005	401 KAR 30:070		401 KAR 59:305
	401 KAR 47:020		401 KAR 61:165
	401 KAR 47:050	224.330	401 KAR 50:015
	401 KAR 49:010		401 KAR 50:016
224.011	401 KAR 5:026		401 KAR 57:011
	401 KAR 5:200		401 KAR 57:035
224.020	401 KAR 5:026		401 KAR 57:040
	401 KAR 5:200		401 KAR 59:019
224.032	401 KAR 6:200		401 KAR 59:036
224.033	401 KAR 5:200		401 KAR 59:049
	401 KAR 30:010		401 KAR 59:061
	401 KAR 30:070		401 KAR 59:099
	401 KAR 32:020		401 KAR 59:131
	401 KAR 32:100		401 KAR 59:136
	405 KAR 16:170		401 KAR 59:141
	405 KAR 18:170		401 KAR 59:146
224.034	401 KAR 5:200		401 KAR 59:171
224.037	401 KAR 5:200		401 KAR 59:181
224.060	401 KAR 5:026		401 KAR 59:196
	401 KAR 5:200		401 KAR 59:201
224.071	401 KAR 32:020		401 KAR 59:213
	401 KAR 32:050		401 KAR 59:216
224.073	401 KAR 5:200		401 KAR 59:221
224.075	401 KAR 5:200		401 KAR 59:251
224.081	401 KAR 5:200		401 KAR 59:275
224.083	401 KAR 5:200		401 KAR 59:280
224.110	401 KAR 5:200		401 KAR 59:285
224.135	401 KAR 5:010		401 KAR 59:300
	401 KAR 5:200		401 KAR 59:305
224.140	401 KAR 5:200		401 KAR 61:165
224.144	401 KAR 5:200	224.340	401 KAR 50:015
224.2201	410 KAR 1:010		401 KAR 50:016
	410 KAR 1:020		401 KAR 57:011
224.2203	410 KAR 1:010		401 KAR 57:035
	410 KAR 1:020		401 KAR 57:040
224.2207	410 KAR 1:010		401 KAR 59:019
	410 KAR 1:020		401 KAR 59:036
224.2209	410 KAR 1:010		401 KAR 59:049
	410 KAR 1:020		401 KAR 59:061
224.2211	410 KAR 1:010		401 KAR 59:099
	410 KAR 1:020		401 KAR 59:131
224.2213	410 KAR 1:010		401 KAR 59:136
	410 KAR 1:020		401 KAR 59:141
			401 KAR 59:146

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KRS Section	Regulation	KRS Section	Regulation
224.340 (cont'd)	401 KAR 59:171	230.630	811 KAR 1:070
	401 KAR 59:181		811 KAR 1:090
	401 KAR 59:196		811 KAR 1:105
	401 KAR 59:201		811 KAR 1:150
	401 KAR 59:213		811 KAR 1:160
	401 KAR 59:216	230.640	811 KAR 1:070
	401 KAR 59:221		811 KAR 1:090
	401 KAR 59:251		811 KAR 1:105
	401 KAR 59:275		811 KAR 1:150
	401 KAR 59:280		811 KAR 1:160
	401 KAR 59:285	230.650	811 KAR 1:150
	401 KAR 59:300	230.660	811 KAR 1:150
	401 KAR 59:305	230.700	811 KAR 1:070
	401 KAR 61:165		811 KAR 1:090
224.830-224.860	401 KAR 47:020	230.710	811 KAR 1:070
	401 KAR 47:050	230.720	811 KAR 1:105
224.830-224.877	401 KAR 31:040	230.730	811 KAR 1:105
	401 KAR 31:160	230.750	811 KAR 1:195
	401 KAR 31:170	230.770	811 KAR 1:215
	401 KAR 32:020	235.040	402 KAR 4:030
	401 KAR 32:050	235.050	402 KAR 4:030
	401 KAR 32:100	235.150	402 KAR 4:030
224.830-224.889	401 KAR 30:070	235.240	402 KAR 4:190
224.835	401 KAR 30:010	235.280	402 KAR 4:190
	401 KAR 49:010	235.300	402 KAR 4:190
	401 KAR 49:020	241.060	804 KAR 4:240
	401 KAR 49:030		804 KAR 9:050
	401 KAR 49:040	241.065	804 KAR 9:050
224.842	401 KAR 49:010	241.075	804 KAR 9:050
	401 KAR 49:020	243.030	804 KAR 4:260
	401 KAR 49:030		804 KAR 7:045
224.846	401 KAR 30:010		804 KAR 9:050
224.855	410 KAR 1:010	243.040	804 KAR 4:260
	410 KAR 1:020	243.230	804 KAR 4:270
224.855-224.889	401 KAR 30:010	243.260	804 KAR 4:250
224.862	410 KAR 1:010	243.290	804 KAR 4:250
224.864	410 KAR 1:010	244.050	804 KAR 1:120
	410 KAR 1:020	244.130	804 KAR 1:100
224.866	410 KAR 1:010		804 KAR 1:120
	410 KAR 1:020		804 KAR 2:005
224.868	401 KAR 47:020	244.240	804 KAR 1:110
	401 KAR 47:050		804 KAR 1:120
224.869	401 KAR 47:020	244.440	804 KAR 4:240
	401 KAR 47:050	244.500	804 KAR 1:120
224.887	401 KAR 49:010	244.590	804 KAR 2:005
	401 KAR 49:020		804 KAR 11:030
	401 KAR 49:030	247.232	302 KAR 16:010
	401 KAR 49:040		302 KAR 16:020
224.888	401 KAR 49:010		302 KAR 16:030
	401 KAR 49:020		302 KAR 16:040
	401 KAR 49:030		302 KAR 16:060
	401 KAR 49:040	247.234	302 KAR 16:010
224.994	401 KAR 30:070		302 KAR 16:020
	401 KAR 31:040		302 KAR 16:030
	401 KAR 31:160		302 KAR 16:040
	401 KAR 31:170		302 KAR 16:050
	401 KAR 32:020		302 KAR 16:060
	401 KAR 32:050	247.236	302 KAR 16:020
	401 KAR 32:100		302 KAR 16:040
	401 KAR 47:020		302 KAR 16:060
	401 KAR 47:050	250.366	12 KAR 4:080
224.995	401 KAR 47:020		12 KAR 4:090
230.210-230.360	810 KAR 1:009		12 KAR 4:100
230.410-230.447	812 KAR 1:020		12 KAR 4:120
	812 KAR 1:030		12 KAR 4:130
	812 KAR 1:035		12 KAR 4:160
	812 KAR 1:050		12 KAR 4:170
	812 KAR 1:060	250.391	12 KAR 4:130
	812 KAR 1:070	250.396	12 KAR 4:130
	812 KAR 1:080		12 KAR 4:140
230.620	811 KAR 1:150	250.401	12 KAR 4:130
		250.406	12 KAR 4:110



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KRS Section	Regulation	KRS Section	Regulation
250.411	12 KAR 4:170	304.12-080	806 KAR 2:096
251.451	302 KAR 34:020	304.12-085	806 KAR 12:110
251.610	302 KAR 34:010	304.12-090	806 KAR 2:096
	302 KAR 34:030	304.12-220	806 KAR 12:090
251.640	302 KAR 34:010	304.12-230	806 KAR 12:090
	302 KAR 34:030	304.13-063	601 KAR 13:040
251.720	302 KAR 34:020	304.14-120	806 KAR 15:030
	302 KAR 34:030	304.15-115	806 KAR 15:030
Chapter 257	302 KAR 20:040	304.15-130	806 KAR 15:030
	302 KAR 20:065	304.15-342	806 KAR 6:060
	302 KAR 20:070		806 KAR 12:110
257.020	302 KAR 20:055	304.15-390	806 KAR 15:010
	302 KAR 20:150		806 KAR 15:030
	302 KAR 20:180	304.15-410	806 KAR 6:060
	302 KAR 20:190		806 KAR 6:070
257.030	302 KAR 20:055	304.17-275	806 KAR 6:080
	302 KAR 20:180	304.20-070	806 KAR 12:090
	302 KAR 20:190	304.20-150-304.20-180	806 KAR 12:090
257.040	302 KAR 20:055	304.29-590	806 KAR 12:090
	302 KAR 20:190	304.32-180	806 KAR 9:180
257.060	302 KAR 20:055	304.32-270	806 KAR 12:090
257.070	302 KAR 20:055	304.38-110	806 KAR 9:180
257.115	302 KAR 20:055		806 KAR 38:020
260.755-260.845	12 KAR 5:020	304.38-200	806 KAR 12:090
	12 KAR 5:030	304.39-070	806 KAR 12:090
	12 KAR 5:040	304.39-080	806 KAR 39:070
260.992	12 KAR 5:020	304.39-085	806 KAR 39:070
	12 KAR 5:030	304.43-080	806 KAR 9:180
	12 KAR 5:040		806 KAR 43:010
273.410-273.468	905 KAR 6:030	304.43-130	806 KAR 12:090
Chapter 278	807 KAR 5:001	311.271	201 KAR 9:021
	807 KAR 5:006	311.420	201 KAR 25:011
	807 KAR 5:011	311.450	201 KAR 25:021
280.010-280.130	603 KAR 5:061	311.530-311.610	201 KAR 9:024
290.070	808 KAR 3:050	311.530-311.620	201 KAR 9:018
290.100	808 KAR 3:050		201 KAR 9:021
290.225	808 KAR 3:050		201 KAR 9:023
290.585	808 KAR 3:050		201 KAR 9:025
290.715	808 KAR 3:050		201 KAR 9:031
Chapter 292	808 KAR 10:010		201 KAR 9:041
	808 KAR 10:020		201 KAR 9:051
	808 KAR 10:060		201 KAR 9:061
	808 KAR 10:090		201 KAR 9:071
	808 KAR 10:120		201 KAR 9:081
	808 KAR 10:130		201 KAR 9:082
	808 KAR 10:140	311.990	201 KAR 9:018
292.400	808 KAR 10:170		201 KAR 9:021
292.410	808 KAR 10:150		201 KAR 9:023
	808 KAR 10:190		201 KAR 9:024
	808 KAR 10:210		201 KAR 9:025
304.2-100	806 KAR 15:030		201 KAR 9:031
304.2-165	806 KAR 12:090		201 KAR 9:041
304.2-290	806 KAR 6:070		201 KAR 9:051
304.3-200	806 KAR 12:090		201 KAR 9:061
304.4-010	806 KAR 2:095		201 KAR 9:071
	806 KAR 2:097		201 KAR 9:081
304.6-070	806 KAR 6:080		201 KAR 9:082
304.6-130-304.6-180	806 KAR 6:070	Chapter 314	201 KAR 20:340
304.6-140	806 KAR 6:060	314.011	201 KAR 20:056
304.6-145	806 KAR 6:060		201 KAR 20:057
304.6-180	806 KAR 6:060		201 KAR 20:161
304.7-240	806 KAR 15:010		201 KAR 20:200
	806 KAR 15:030		201 KAR 20:205
304.9-105	806 KAR 9:180		201 KAR 20:210
304.9-160	806 KAR 9:180		201 KAR 20:215
	806 KAR 15:010		201 KAR 20:220
304.9-320	806 KAR 9:180		201 KAR 20:250
304.9-430	806 KAR 9:180		201 KAR 20:280
304.12-010	806 KAR 12:090		201 KAR 20:290
304.12-020	806 KAR 15:030		201 KAR 20:300
	806 KAR 39:070		201 KAR 20:310
304.12-030	806 KAR 15:030		201 KAR 20:320
			201 KAR 20:330

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KRS Section	Regulation	KRS Section	Regulation
314.021	201 KAR 20:200	317.590	201 KAR 14:170
	201 KAR 20:205	317A.010	201 KAR 12:020
	201 KAR 20:215	317A.020	201 KAR 12:020
314.031	201 KAR 20:161	317A.030	201 KAR 12:010
	201 KAR 20:205		201 KAR 12:040
314.041	201 KAR 20:070	317A.040	201 KAR 12:010
	201 KAR 20:085	317A.050	201 KAR 12:020
	201 KAR 20:095		201 KAR 12:031
	201 KAR 20:110		201 KAR 12:060
	201 KAR 20:230	317A.060	201 KAR 12:040
	201 KAR 20:240		201 KAR 12:060
	201 KAR 20:260		201 KAR 12:082
314.042	201 KAR 20:056	317A.090	201 KAR 12:082
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